



The Florida Senate

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Committee on Banking and Insurance

ISSUES RELATING TO SINKHOLE INSURANCE

Issue Description

Sinkhole Insurance

Sinkholes occur in certain parts of our state's landscape due to the unique geological structure of the land. Sinkholes are geologic features formed by movement of rock or sediment into voids created by the dissolution of water-soluble rock.¹ This type of subsidence formation is aggravated and accelerated by urbanization and suburbanization, by water usage and changes in weather patterns.²

Insurers offering property insurance to homeowners in Florida have been required to offer coverage for damages resulting from sinkholes since 1981.³ Under current law, insurers must make available to policyholders, for an appropriate additional premium, sinkhole coverage for losses on any structure, including personal property contents. Sinkhole coverage includes repairing the home, stabilizing the underlying land, and foundation repairs. Property insurers must also provide coverage for catastrophic ground cover collapse.⁴

Sinkhole insurance claims have increased substantially both in number and cost over the past two decades and most dramatically over the last several years.⁵ For example, for Citizens Property Insurance Corporation, (Citizens), the largest property insurer in the state, the claims frequency ratio more than doubled between 2006 and 2009.⁶ This precipitous statewide increase is driven by the insurer's sinkhole claims in Hernando, Pasco, and Hillsborough counties, the so-called "sinkhole alley" counties, where the claims have increased by 375 percent, 187 percent, and 384 percent, respectively, over the same time period.⁷ In 2009, Citizens incurred over \$84 million in sinkhole losses plus adjustment expenses, yet obtained only \$19.6 million in earned premium to cover those costs. The losses represent almost four times the amount of premiums collected from the insurers' policyholders for sinkhole coverage, yet the company's rates are capped, and cannot be increased by more than approximately 10 percent per year for any policyholder.⁸

Private insurers have also seen their sinkhole claims and costs rise by double and triple digit percentages over the past several years. Responding to a recent survey by the Office of Insurance Regulation (OIR), 211 property

¹ Thomas L. Dobecki and Sam B. Upchurch, *Geophysical Applications to Detect Sinkholes and Ground Subsidence*, The Leading Edge, March 2006.

² According to the staff with the Florida Geological Survey (FGS), there are two important factors pertaining to sinkhole formation: hydrology and land-surface loading/disturbance. Hydrologic factors include changes and rates of change in aquifer pressures (water levels or potentiometric surfaces), which are generally responses to pumping, seasonal change and climatic change. Land loading pertains to construction activities ranging from roads, elevated highways and buildings to landfills and water reservoirs. Land disturbance relates to activities such as landfill or reservoir construction (prior to loading with waste or water, respectively), and drilling.

³ Ch. 81-280, L.O.F.

⁴ Catastrophic ground cover collapse refers to extreme damage in which a property is essentially destroyed and uninhabitable.

⁵ Sinkhole claims have increased in frequency and severity in years past which were the primary reasons academic studies were commissioned by the Legislature in 1992 and 2004, as discussed below.

⁶ Citizens Property Insurance Corporation is a state-created, not-for-profit, tax-exempt entity and is not a private insurance company. The Citizens claims data is discussed under the Findings Section of this report. Claims frequency is commonly measured as a percentage: the ratio of the number of claims compared to the number of policyholders in a given period.

⁷ The majority of sinkhole related claims are generated in these three counties and Pinellas county.

⁸ Ch. 2009-87, L.O.F. Citizens rates are capped at 10 percent per year for its policyholders, plus a "cash build up" factor of less than 1 percent.

insurers reported that the total reported claims increased from 2,360 in 2006 to 6,694 in 2010, totaling 24,671 claims throughout that period.⁹ Total sinkhole claim costs for these insurers amounted to approximately \$1.4 billion for the same period. Of the total sinkhole claims reported to the OIR, 66 percent of the claims were concentrated in the three sinkhole-alley counties, Hernando, Pasco, and Hillsborough. However, the OIR study found that sinkhole claims have also increased in areas generally not subject to sinkhole activity, like Miami-Dade and Broward counties. For claims data submitted to the OIR for the year to date, the number of claims from these two counties in 2009 was seven times what it was in 2006.

The Florida Insurance Commissioner has identified sinkhole claims as a major “cost driver” and has expressed concern that such claims could threaten the solvency of domestic insurers and have a significant destabilizing effect on an already fragile market.¹⁰ The Commissioner is concerned that many sinkhole claims are questionable and that public adjusters and others are “gaming the system.”¹¹ Based upon the opinions of licensed geologists in Florida, there is no geological explanation for such a significant increase in the number of claims reported to insurance carriers over the last several years.¹² Further, areas of the state which have similar geology as the sinkhole-alley counties (i.e., Pasco, Hernando, Pinellas and Hillsborough) and which have experienced development, do not have nearly the number of sinkhole claims as the sinkhole-alley counties.¹³

Representatives from OIR, as well as insurers, believe that a major driving force for the significant increase in sinkhole claims is the fact that many policyholders are incentivized to file such claims because they can keep the cash proceeds from the claim instead of effectuating repairs to their home or remediating the land. The failure of sinkhole claimants to make repairs or stabilize land has concerned property appraisers in several counties, particularly in Hernando and Pasco counties. They believe that this dilemma has had a damaging effect on the market values of affected homes which could lead to financial instability of local governments. The Hernando Property Appraiser has estimated that since 2005, the county has lost \$173 million in total market value as a result of value adjustments to sinkhole homes.¹⁴

Some public adjusters and attorneys who represent a significant number of homeowners have told Committee staff that most homeowners who obtain payouts from their insurers do not use the funds to repair or remediate the claimed damage. A number of policyholders have used the funds to pay off their mortgage. This conclusion is consistent with the experience of one domestic insurer, HomeWise Preferred Insurance Co., that conducted its own evaluation of 110 sinkhole claims. Only 27 percent of their policyholders who received funds for repair of the sinkhole and home actually performed the repairs.

Some experts have raised the issue as to whether the sinkhole peril is even insurable because the condition which creates the risk is endemic to the state’s geological composition.¹⁵ Many issues arise as to the extent first-party property insurance coverage for structures should respond to loss mitigation activities involving the land instead of the structure.¹⁶ Coverage currently exists for sudden and dramatic earth movement,¹⁷ but providing coverage

⁹ Office of Insurance Regulation (OIR), *Report on Review of the 2010 Sinkhole Data Call* (OIR Report), November 8, 2010; http://www.florid.com/pdf/2010_Sinkhole_Data_Call_Report.pdf. The data call also included claims information from Citizens.

¹⁰ Leslie Scism, *The Wall Street Journal*, September 21, 2010.

¹¹ Palm Beach Post, August 21, 2010. Public adjusters may file claims on behalf of homeowners and receive commissions on claims paid.

¹² Jon Arthur, Director, Office of the Florida Geological Survey.

¹³ See OIR Report. Staff with FGS state that the geologic setting of the sinkhole-alley region of these four counties is characterized by shallow limestone, i.e., relatively near land surface, overlain by sands with various mixtures of clay. Other Florida counties with a similar geologic setting include Orange, Marion, Dixie, Citrus, Jefferson, Lafayette, Levy and Taylor counties and parts of Columbia, Hardee, Gilchrist, Hamilton, Jackson, Lafayette, Lake, Leon, Madison, Seminole, Sumter, Suwannee, Volusia and Washington counties.

¹⁴ Letter dated October 18, 2010, from Alvin R. Mazourek, Property Appraiser of Hernando County, to Senator Mike Fasano. This figure is a small fraction of the real cost because it is largely based on homeowners contacting the appraiser’s office seeking a reduction in the value of their property (and admitting they made no repairs).

¹⁵ Florida State University Center for Insurance Research Report, *Insurance Study of Sinkholes* (FSU 1992 Study).

¹⁶ Property insurance policies typically exclude coverage for “earth movement.”

¹⁷ Catastrophic ground cover collapse is required to be covered in property insurance policies under s. 627.706, F.S.

for long-term subtle earth movements like sinkholes creates multiple problems associated with recognizing and identifying both the time and cause of the loss, measurement of the value of the loss, and determining its occurrence.¹⁸

If the sinkhole peril is determined to be uninsurable as a matter of policy, it would create a dilemma for affected homeowners and their elected representatives. On one hand, a private business should not be forced to risk its capital, particularly at a dictated price that is well below the cost of coverage, on a peril that is essentially uninsurable. On the other hand, homeowners who believe they live in areas that are vulnerable to sinkhole damage would expect some form of protection.

There have been suggestions in years past about establishing a statewide sinkhole repair program or facility to which insurers would cede all sinkhole coverage. Such a program could provide a centralized and consistent loss adjustment process, assure equal treatment of policyholders, and ensure that all claims proceeds are used exclusively for structural repairs and land stabilization. Academicians in Florida have recommended a facility or fund be created in studies published in 1992 and 2005.¹⁹ Six states currently have “single peril” facilities for coal mine subsidence claims. Such a program or facility could restore the private market and Citizens, which are currently facing significant financial challenges as a result of rapidly increasing sinkhole loss frequency and severity.²⁰

Overview of Report and Methodology

The Legislature has revised the sinkhole law several times over the past five years. According to many stakeholders, however, some of the revisions have caused confusion as to their meaning and intent, generated lawsuits, or not gone far enough in resolving the problems endemic to the sinkhole claims process. The purpose of this interim report is to review the legislative history of Florida’s sinkhole law as well as prior academic studies on this topic, summarize the current sinkhole law, and examine the sinkhole claims process with regard to the frequency and severity of sinkhole claims, and the affordability and availability of such insurance coverage. The report will review the states which have developed separate residual market mechanisms which offer coverage for coal mine subsidence losses. This study will further identify certain areas of concern as to sinkhole issues and finally offer options for policymakers to consider.

Committee staff conducted statutory and rule research, reviewed publications from national and state research institutions, and obtained background information and conducted interviews with insurance representatives, policyholders, agency officials, attorneys, geologists, engineers, bankers, public adjusters, realtors, academicians, neutral evaluators, and staff with the Pasco and Hernando County Property Appraiser offices. Committee staff also visited Pasco and Hernando counties to observe homes which were being tested to determine whether there was sinkhole activity, and toured homes which were being repaired and the land remediated.

Sources for this report include sinkhole policy and claims information collected from 211 insurers for the period of 2006 to 2010, pursuant to a data call by the OIR in September 2010, claims and policy data collected by Citizens Property Insurance Corporation, and similar data collected by several individual insurers. This data, along with the other referenced background and research information, is the primary source of information utilized for the Findings Section of this report.

¹⁸ FSU 1992 Study. The elements of an insurable risk are that the loss must be definite and measurable; losses be economically feasible to insure; the loss must be fortuitous; the loss cannot be catastrophic, and there must be a large number of similar exposure units. American Institute for Chartered Property and Casualty Underwriters, *Property and Liability Insurance Principles*, 3rd Ed., August, 2004.

¹⁹ FSU 1992 Study; Florida State Univ. College of Business, Dept. of Risk Management and Insurance, *Final Report: Insurance Study of Sinkholes* (FSU 2005 Report). The FSU 2005 Report was authored by Maroney, Cole, Corbett, Dumm, Eastman, Gatzlaff, and McCullough.

²⁰ Sinkhole claims frequency refers to the number of claims and sinkhole claims severity is the amount paid per claim.

Background

Legislative History of Florida's Sinkhole Laws and Related Academic Studies

Florida first addressed the issue of insurability of sinkholes in 1969 when a reinsurance facility was put in place to cover the peril of sinkhole loss.²¹ This facility was “rendered obsolete” by the fact that few policyholders purchased the optional sinkhole coverage.²² Twelve years later in 1981, the Legislature created the sinkhole insurance law to require property insurers to make available coverage for sinkhole losses on any structure and personal property contents.²³ Minimum standards for the investigation of sinkhole claims were established in 1992 and insurers were required to inspect the insured’s premises to determine physical damage to the structure, upon receipt of the claim.²⁴ If the damage to the structure was consistent with sinkhole activity, the insurer was required to pay for testing and obtain a written certification from an expert to determine the existence of sinkhole activity or to determine that the cause of the damage was not sinkhole activity. Insurers were prohibited from nonrenewing any policy on the basis of filing claims for losses caused by sinkhole damage as long as the damage was below policy limits and provided the insured repaired the structure in accordance with the engineer’s recommendation.²⁵

The 1992 Legislature also authorized an academic study of the issue of sinkhole insurance coverage under the direction of the Department of Insurance.²⁶ The study surveyed 11 insurers representing 55 percent of the market and concluded that a statewide sinkhole subsidence facility should be created to handle all sinkhole claims. The study reviewed insurer claims data from 1987 thru 1991 and contained these findings:

- Frequency of sinkhole claims were increasing (sinkhole claims rose from 35 in 1987 to 426 in 1991) and the amounts expended to pay sinkhole losses and related loss adjustment expenses had grown significantly;
- Sinkhole claims appeared to be restricted to the Tampa Bay area;
- Homeowners throughout the state were subsidizing those in high-risk sinkhole areas;²⁷
- Property values were “substantially affected” by sinkhole occurrences; however, there was little consensus as to the size of the effect;
- Establishing a subsidence fund/facility for sinkhole claims would be beneficial;
- Uniform criteria should be adopted for sinkhole investigations;
- The “insurability” of earth movement (sinkhole activity) is questionable (due to the long-term nature of subtle earth movements) because it is difficult to identify both the time and cause of the loss; and
- Coverage for sinkholes is feasible, but the following conditions should be met:²⁸
 - the environment should be stabilized through consistent and predictable land use and construction standards;
 - standard repair techniques should be applied;
 - insurance policies should contain specifics regarding limits and extent of coverage;
 - coverage must be purchased by a large enough percentage of the market; and
 - insurance coverage provided by a “single source” would apply economies of scale in cause and origin determination and thereby control loss adjustment expenses.

²¹ Ch. 69-199, L.O.F. The legislation provided that, after a public hearing, the Insurance Commissioner could either require property insurers to include sinkhole loss insurance in their policies or establish a plan for the equitable apportionment or sharing among insurers of sinkhole coverage by means of an assigned risk, joint underwriting, or other arrangement among insurers.

²² FSU 1992 Study.

²³ Ch. 81-280, L.O.F., creating s. 627.706, F.S. The terms “loss” and “sinkhole loss” were defined.

²⁴ Ch. 92-146, L.O.F., creating s. 627.707, F.S.

²⁵ This prohibition was in effect from the effective date of the act through July 1, 1993, when it was due to be repealed. However, a year later, the Legislature enacted ch. 93-401, L.O.F., which removed the repeal provision.

²⁶ FSU 1992 Study.

²⁷ This was because there was not a separate rate charged for sinkhole coverage and there was no distinction with regard to rating territory.

²⁸ The study concluded that if these conditions are not met, the losses from sinkholes are not predictable to develop a measure of overall loss and a fair and adequate insurance premium would be difficult to calculate.

The study recommended a statewide subsidence facility be created akin to the Illinois Mine Subsidence Fund to provide for centralized and consistent sinkhole loss adjustment practices, restore public confidence in those practices, and assure policyholders are treated equally.”²⁹

One year later, the Legislature added a provision relating to policyholders filing sinkhole claims in bad faith.³⁰ Specifically, if the insurer obtained a written certification that the cause of the damage was not sinkhole activity, the policyholder was required to reimburse the insurer for 50 percent of the cost, up to \$2,500, but only if the policyholder submitted the sinkhole claim without good faith grounds and the insurer informed the policyholder in writing of this potential liability. The policyholder must be given the opportunity to withdraw the claim under this provision.

In 2002, a follow-up study was conducted to examine 812 closed sinkhole claims in the state.³¹ The survey results were consistent with the findings of the 1992 study indicating that the problem of sinkholes had increased in both frequency and severity during the period examined (1996-2001), particularly in the central regions of the state. For example, the average sinkhole claims payment by insurers for damages to land (foundation repairs) increased from \$2,632 in 1996 to an average of \$12,070 in 2001, an increase of 350 percent. During the sample period, the average paid claim amount increased from \$40,218 to \$62,628, representing a 55 percent increase.

In 2004, the Legislature again authorized an in-depth study of sinkhole issues including the feasibility and cost-benefit of creating a Florida sinkhole insurance facility. The study also examined issues relating to frequency and severity of sinkhole claims as well as the affordability and availability of sinkhole coverage.³² The report’s findings noted that due to the similarities of the perils of mine subsidence and sinkholes, mine subsidence facilities provide a basis from which to develop a model for a state sinkhole insurance facility.³³ The report concluded that Florida had two options concerning the creation of a sinkhole facility:

- Establish a reinsurance facility housed in an existing entity or under the umbrella of a state agency like the State Board of Administration, that would be responsible for the payment of sinkhole claims. Under this entity:
 - Claims would be financed through premiums ceded to the facility by insurers;
 - The facility could coordinate the adjustment of sinkhole claims, thereby reducing claims disputes;
 - Centralized claims handling would achieve the goals discussed in the 1992 report of a more centralized, consistent and efficient processing of claims;
 - The policyholder would have a single contract with a given insurer rather than a separate insurer for sinkhole coverage;
 - The facility could be exempt from Federal taxation, depending on its placement and governance; and
 - Start-up costs like employee administration and payroll could be outsourced, thus reducing costs.
- Establish a direct writer for the peril of sinkhole. Under this entity:
 - Insurers would exclude the sinkhole peril in their policies (but possibly continue coverage for catastrophic collapse) and policyholders would obtain coverage from a direct writer; and
 - The availability of coverage in the Florida homeowners’ market would be protected and insurers would not be subject to costs associated with sinkhole claims.

The authors of the report recommended that a reinsurance facility, and not a direct writer entity, would be the more cost-effective solution.

²⁹ FSU 1992 Study.

³⁰ Ch. 93-401, F.S.

³¹ FSU 2005 Report.

³² Ch. 2004-370, L.O.F. Ch. 2004-390, L.O.F., provided for the same study. The FSU 2005 Report examined six state single-peril subsidence funds/facilities in terms of operational and functional issues. The legislation also authorized the Department of Financial Services to designate an employee within the Division of Consumer Services as a consumer advocate on sinkhole issues.

³³ An analysis of the state mine subsidence facilities is discussed later in this report.

In analyzing sinkhole claims data from insurers representing 45 percent of the market, the 2005 report found that the number of sinkhole claims grew from 348 in 1999, to 1,018 in 2003, while total claims payments for sinkholes increased from \$22.4 million in 1999, to in excess of \$65 million in 2003. During this same period, there were a total of 2,509 paid sinkhole claims, representing 1 percent of all claims paid by insurers, but the \$219.2 million paid for sinkhole claims accounted for 16.2 percent of total claims payments.

Finally, the report recommended the following statutory changes: (1) revise the sinkhole definitions; (2) develop uniformity in the adjustment process; (3) clarify sinkhole coverage provisions; and (4) create data warehousing systems to store sinkhole claims information and provide sinkhole related training (to geologists, engineers, other professionals, and the public), communication, and education services.³⁴ The study suggested that if these measures did not remedy the problem, the state should establish a sinkhole facility.

The Legislature in 2005, 2006, and 2007 implemented many of the recommendations contained in the FSU 2005 Report in response to the continuing sinkhole crisis.³⁵ The 2005 legislation provided definitions for sinkhole terms; created a database;³⁶ revised provisions pertaining to sinkhole claims investigations and sinkhole reports,³⁷ and created uniform sinkhole testing standards.³⁸ As to the testing standards, geologists and engineers were required to perform tests to determine the presence or absence of sinkhole loss or other cause of damage within a reasonable professional probability, and engineers were mandated to make recommendations regarding necessary building stabilization and foundation repairs. The specific changes to the sinkhole law are outlined below:

- Defined the terms sinkhole, engineer, and professional geologist and amended the definitions for sinkhole loss and sinkhole activity.
- Established a sinkhole database under the Dept. of Financial Services to track sinkhole insurance claims.
- Specified that sinkhole coverage include the costs to stabilize the land and building, repair the foundation and pay for structural repairs and contents.
- Allowed an insurer to deny a sinkhole claim if the insurer determines there is no sinkhole loss, but the insurer must provide written notice to the policyholder of their right to demand testing.
- If the policyholder demands testing, the insurer must pay for the testing and engage an engineer or a geologist in compliance with the Florida Geological Survey Special Publication No. 57 (2005).
- Testing must be conducted in compliance with specified standards and a report must be issued as to the cause of the loss.
- The findings and recommendations, as to verification or elimination of a sinkhole loss, by the engineer and geologist are “presumed correct.”³⁹ The insurer must pay the costs of stabilization and repair in accordance with the report containing the findings and recommendations, if a sinkhole loss is verified.
- The insurer may limit its payment to the actual cash value of the sinkhole loss, not including underpinning or grouting or other repairs below the foundation, until the policyholder enters into a contract for building stabilization or foundation repairs. After the policyholder enters into such contract, the insurer must pay amounts necessary to begin repairs as work is performed and expenses incurred. The insurer cannot require the policyholder to advance payments.
- If repair has begun and the engineer selected or approved by the insurer determines that the repair cannot be completed within the policy limits, the insurer must either complete the engineer’s recommended repair or tender the policy limits to the policyholder without a reduction for the repair expenses incurred.
- If an insurer pays a sinkhole claim, it must file a copy of the professional engineer or geologist report and certification with the county property appraiser.

³⁴ Representatives from geoscience and geotechnical engineering groups suggested there was a need to remove the ambiguity with current statutory provisions to reflect more scientific based definitions and terms (Sinkhole Summit II).

³⁵ Ch. 2005-111, L.O.F.; ch. 2006-12, L.O.F.; ch. 2007-1, L.O.F., and ch. 2007-90, L.O.F.

³⁶ Created s. 627.7065, F.S.

³⁷ Created s. 627.7073, F.S.

³⁸ Created s. 627.7072, F.S.

³⁹ The effect of the presumption of correctness of an engineer or geologist report is now before the Florida Supreme Court, *Warfel v. Universal Ins. Co. of North America*, App. 2 Dist., 2010 WL 1874367 (2010). The issue is whether this provision creates a presumption affecting the burden of proof under s. 90.304, F.S., or creates a presumption affecting the burden of producing evidence under s. 90.303, F.S.

- The seller of real property must disclose to the buyer that a sinkhole claim has been paid and whether or not the insurance proceeds were used to repair the sinkhole damage.

The legislation enacted in 2006 established an alternative process for resolving sinkhole disputes called “neutral evaluation.”⁴⁰ The Department of Financial Services (DFS) was required to certify engineers and geologists to serve as “neutral evaluators” of sinkhole claims disputes. This process was mandatory if requested by either party, but nonbinding, and the costs were paid by the insurer. The neutral evaluator’s written recommendation was admissible in any subsequent action or proceeding relating to the claim. Further changes were made to the sinkhole law which did the following:

- Allowed residential policies to provide a deductible for sinkhole losses equal to 1, 2, 5, or 10 percent of the dwelling limits.
- Allowed the insurer to make payments directly to the persons selected by the policyholder to make the repairs, if approved in writing by the policyholder and lien holder. The insurer is not liable for work performed.
- Removed the requirement that testing be conducted in compliance with the Florida Geological Survey Special Publication No. 57.
- Required the Office of Insurance Regulation (OIR) to calculate a presumed factor to reflect the impact on rates of the changes made to sinkhole claims by this law and the 2005 law.⁴¹ Each residential property insurer was required, in its next rate filing after October 1, 2006, to reflect a rate change that took into account the presumed factor.
- Required insurers to file information regarding paid sinkhole claims with the county clerk of court, rather than the property appraiser, and specify that the recording of the report does not constitute a lien or restriction on the title, and does not create any cause of action or liability.
- Made it unlawful for a contractor or business providing sinkhole remediation services to communicate with any attorney for the purpose of assisting the attorney in the solicitation of legal business.

The 2007 legislative changes delineated a separate coverage for a subsidence event called a catastrophic ground cover collapse (collapse) and mandated insurers provide this coverage. The term was defined as geological activity that results in all of the following: (1) the abrupt collapse of the ground cover; (2) a depression in the ground visible to the naked eye; (3) structural damage to the building, including the foundation; and (4) the insured structure being condemned and ordered vacated by a governmental agency authorized by law to issue such an order for the structure. Contents coverage would apply if there was a loss resulting from a collapse event; however, structural damage consisting of settling or cracking of a foundation, building, or structure would not constitute a loss resulting from a collapse occurrence.

The legislation required property insurers to continue to make sinkhole coverage available, but allowed insurers to charge an appropriate additional premium. Insurers offering policies that excluded coverage for sinkhole losses were required to provide written notice to the policyholder in 14-point type. The Office of Insurance Regulation was also authorized to establish a pilot program in one or more counties (Pasco and Hernando), to allow Citizens to exclude sinkhole coverage (and offer sinkhole coverage back as an endorsement) without being required to give the policyholder a notice of non-renewal.⁴²

As a result of this statutory change, Citizens made sinkhole coverage optional in the fall of 2007, for homeowners and dwelling policies only. Specifically, for new business, throughout the state, applicants were offered the option of coverage with or without sinkhole coverage; for renewals, in all counties except Pasco and Hernando, policies were automatically renewed with sinkhole coverage, with the option to remove the coverage; for renewals in

⁴⁰ Created s. 627.7074, F.S.

⁴¹ Deloitte published a 2006 actuarial review for the Office of Insurance Regulation (OIR), and found that the presumed factor was 9.6 percent. *Review of Florida Sinkhole Insurance Proposal, Calculation of Section 40 “Presumed Factor”* (Deloitte Report).

⁴² Ch. 2007-90, L.O.F. Citizens premiums had risen due to increased sinkhole losses in Pasco and Hernando counties. This provision reduced the number of sinkhole policies in Citizens and allowed their policyholders to lower their premiums by discontinuing sinkhole coverage, though catastrophic ground cover collapse was still required coverage.

Pasco and Hernando, policies were automatically renewed excluding sinkhole coverage, with the option to add the coverage for an additional premium.

In 2009, legislation was enacted which allowed insurers offering sinkhole coverage to nonrenew those policies in Pasco and Hernando counties, at the option of the insurer, and provide an offer of coverage to policyholders in those two counties which included catastrophic ground cover collapse and excluded sinkhole coverage.⁴³ However, the insurer must offer an endorsement for sinkhole coverage, subject to an inspection and subject to the insurer's underwriting guidelines. Policyholders must be provided a credit or discount for removal of sinkhole coverage.

The law also mandated the creation of a building code effectiveness grading schedule to be adopted by the Financial Services Commission by rule. Four years after a county amends the Florida Building Code with a "sinkhole loss prevention ordinance," the OIR will use the building code effectiveness grading schedule to evaluate the effectiveness of the county ordinance in reducing the number of sinkholes and the severity of sinkhole losses.⁴⁴ The bill further mandates the creation of insurance premium discounts or surcharges on personal residential property insurance based on a property's compliance with a sinkhole loss prevention ordinance and the effectiveness of the ordinance as determined by the grading schedule. Pasco County has adopted such an ordinance which is discussed under the Findings Section of this report.

Current Sinkhole Insurance Law Provisions

A "sinkhole" is defined in Florida law as a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater.⁴⁵ It may form by collapse into subterranean voids created by dissolution of limestone or dolostone or by subsidence as these strata are dissolved. Sinkholes can be depressions or collapses in the land surface, or may be hidden from view below the surface. According to geologists, most sinkholes are hidden and not observable which is the one of the reasons scientific tests are performed to determine sinkhole activity. Sinkholes are only one of many kinds of karst landforms, which include caves, disappearing streams, springs, and underground drainage systems, all of which occur in Florida.⁴⁶

Nationally, property insurance policies typically exclude coverage for "earth movement." But, in Florida, every authorized insurer must make sinkhole coverage available, for an additional premium, and must provide coverage for catastrophic ground cover collapse.⁴⁷ Catastrophic ground cover collapse refers to extreme damage in which a property is essentially destroyed and uninhabitable (see Example A).⁴⁸

⁴³ Ch. 2009-178, L.O.F. Sinkhole claims in Pasco and Hernando counties had increased for property insurers in a manner similar to Citizens' experience. Policyholders in those counties now had the option to discontinue their sinkhole coverage, thereby reducing their premiums.

⁴⁴ A sinkhole loss prevention ordinance means a county ordinance that amends the Florida Building Code and that is intended to reduce the number of sinkhole claims and the severity of sinkhole losses.

⁴⁵ S. 627.706(2)(b), F.S.

⁴⁶ Karst is a generic term which refers to the characteristic terrain produced by erosional processes associated with the chemical weathering and dissolution of limestone or dolomite, the two most common carbonate rocks in Florida.

⁴⁷ S. 627.706(2)(a), F.S.

⁴⁸ Example A would meet the criteria for catastrophic ground cover collapse.

Example A

Under current law, a “sinkhole loss” means structural damage to the building, including the foundation, caused by sinkhole activity.⁴⁹ Contents coverage shall apply only if there is structural damage to the building caused by sinkhole activity. The term “structural damage” is not defined. The term, “sinkhole activity,” refers to the settlement or systematic weakening of the earth supporting such property only when such settlement or systematic weakening results from movement or raveling of soils, sediments, or rock materials into subterranean voids created by the effect of water on a limestone or similar rock formation.⁵⁰

In summary, under current law, for a policyholder to have a sinkhole loss, there must be actual structural damage to her or his home, including the foundation, which is “caused by” sinkhole activity. In practice, however, claims are often paid without a demonstration that the structural damage is directly attributable to or caused by sinkhole activity. One concern is the lack of a definition for structural damage which has led to the issue (as to the meaning of the term) being debated in many claims cases and has spawned litigation which is one reason that claim severity is so high. Further, establishing whether sinkhole activity has caused structural damage is fraught with problems because of the difficulty in determining: whether there actually is sinkhole activity underneath the

⁴⁹ S. 627.706(2)(c), F.S.

⁵⁰ S. 627.706(2)(d), F.S.

property; and secondly, whether all damage to the structure has been caused by sinkhole activity, as opposed to some other cause. Many engineers and geologists opine in their testing reports that “sinkhole activity cannot be ruled out” as a factor in causing damage to the structure. Based on the uncertainty of these findings, insurers many times pay the claim in order to resolve an existing or potential dispute, even if they are not convinced that sinkhole activity has even occurred, or that it caused the damage to the structure. Structural damage to a home or building may be caused by a variety of other factors including shrinking/swelling of clay soils, post construction settlement, erosion, tree roots, decompression/erosion of organic materials, faulty construction, and thermal material expansion/contraction (e.g., cement or stucco cracking).

Insurers also are reluctant to litigate sinkhole issues because of the “one-way” attorney fee provision under s. 627.428, F.S., and the so called “bad faith” law under s. 624.155, F.S. These two statutes may put insurers in a position in which the most cost effective method of dealing with sinkhole claims is to simply pay them, rather than risk a judgment for claimant attorneys’ fees and bad faith damages after already incurring large costs associated with adjusting these claims.⁵¹

Under the attorney fee provision, an insurer must pay attorney’s fees if it loses in court to its insured under an insurance policy. However, if the insurer prevails, its fees are not paid by the losing side. This is why it is often referred to as the “one-way attorney’s fee” law. The “bad faith” provision allows an insured to bring a civil action against an insurer if the insurer: (1) violates a specified statutory provision; or (2) commits a prohibited act, one of which is not attempting in good faith to settle claims when, under the circumstances, the insurer could and should have done so. The effect of this law allows the insured to sue beyond the limits of the policy and for tort-type damages. Its apparent intent is to encourage good faith on the part of insurers and to compensate those injured by an insurer’s bad faith actions. As stated in the FSU 2005 Report, bad faith related to settlement of insurance claims is determined based on the circumstances of each case rather than on a defined standard that is applicable to all situations or behaviors. With sinkhole claims, the absence of such a standard may lead to increased litigation.

An insurer provided committee staff with two examples of sinkhole claims to illustrate some of the problems noted above, as shown in pictures on the following pages:

- **Example B** shows a home which was in foreclosure when the policyholder filed a claim which had cosmetic or minor damages to various parts of the house. **There was no sinkhole activity found to exist by the geologist/engineer.** The policyholder disputed the finding and the insurer sued for breach of contract. Notwithstanding the finding that no sinkhole activity existed, the insurer paid the policyholder \$28,261.18 for cosmetic damage, to avoid paying the costs of litigation.

Example C shows a home with cosmetic or minor damages to various parts of the house. **Sinkhole activity was found to exist as the cause of the damage to the house by the geologist/engineer** in the testing report and the cost was estimated to be \$26,773.52 to repair the house and \$65,000 for grouting to stabilize the foundation (total cost: \$91,773.52). The policyholder’s public adjuster estimated the repair and grouting to cost \$145,000, but the house policy limit was \$138,000. The insurer settled the claim for \$120,000 to avoid paying the costs of litigation.

⁵¹ FSU 2005 Report.

Example B



Exterior of Home



Crack in Garage Floor



Crack in Ceiling



Crack in Exterior Wall



Crack in Patio Floor

Example C



Exterior of Home



Crack in Garage Floor



Crack in Ceiling



Crack in Exterior Wall



Crack in Patio Floor

The law provides that once the insurance company is notified of the pending claim, it must make an inspection of the insured's premises to determine if there has been physical damage to the structure which may be the result of sinkhole activity.⁵² If the insurer concludes the damage may be the result of such activity, the carrier will then request a professional engineer or a professional geologist to perform the testing to determine the cause of the loss, within a reasonable professional probability, and to issue a report.⁵³

The tests performed typically include floor evaluations, ground penetration radar (GPR) and standard penetration test (SPT) borings.⁵⁴ Insurers use a variety of testing procedures and according to the OIR Report, the average number of testing procedures has increased for both paid and denied claims. The OIR Report found that the average cost among insurers to provide sinkhole tests was \$9,466, while the average cost for Citizens ranged from \$8,061 to \$10,116.

An insurer provided the following example of the cost of sinkhole testing:

- **Example D** shows a house with cracks in various rooms. The insured filed a sinkhole claim and the insurer hired geologists and engineers to determine whether there was sinkhole activity. **The testing procedures cost the insurer \$16,574, and it was determined that there was no sinkhole activity because the cause of the cracks was due to improper construction.**

⁵² S. 627.707, F.S.

⁵³ SS. 627.7072, and 627.7073, F.S.

⁵⁴ A floor elevation (contour) map is done of the relative floor elevations to determine total elevation differences across the floor slab of the main area of the residence or building. GPR is a geophysical exploration tool that is used to detect shallow conditions in the soils adjacent to and underlying a structure. SPT is the most widely used method for testing the strength (bearing capacity) of a soil and involves driving a split spoon sampler into the soil by dropping a 140 lb. hammer 30 inches onto an anvil connected to the drill string. Other tests may also be employed including hand auger borings and test pit excavations. Laboratory analyses are subsequently performed of the soil removed from the testing site.

Example D



Cracks in drywall at hallway ceiling



Cracks on rear elevation of dwelling



Cracks on front elevation of dwelling



Cracks on front elevation of dwelling



Cracks in popcorn ceiling



Crack at addition wall

After the testing is performed, the homeowner is notified of the test results, provided a copy of the report, and given notice of the right to participate in the neutral evaluation program. The test report contains the findings and recommendations of the engineer or geologist as to the cause of loss, a description of the tests performed, and a recommendation as to methods for stabilization and repair. These findings and recommendations are presumed correct.⁵⁵ An insurer may deny a claim if it determines that there is no sinkhole loss; however, if the claim is denied without tests being performed, the policyholder may demand testing and the carrier must comply. If a sinkhole loss is verified, the insurer must pay to stabilize the land and building and repair the foundation in accordance with the report's recommendations, and "in consultation with" the policyholder.⁵⁶

⁵⁵ S. 627.7073, F.S. As noted earlier in this report, the presumption of correctness of an engineer or geologist report is on appeal to the Florida Supreme Court, *Warfel v. Universal Ins. Co. of North America*, App. 2 Dist., 2010 WL 1874367 (2010).

⁵⁶ S. 627.707, F.S. The meaning of the term "in consultation with the policyholder" has caused confusion as to its meaning which has resulted in litigation as discussed later in this report.

The two most commonly recommended stabilization techniques are grouting and underpinning.⁵⁷ Under the grouting procedure, a grout mixture (composed of cement, sand, flyash, and water) is injected into the ground to stabilize the subsurface soils to minimize further subsidence damage by densifying the soils beneath the building as well as sealing the top of the limestone surface to minimize future raveling. Underpinning consists of steel pipes drilled or pushed into the ground to stabilize the building's foundation. Both of these procedures are expensive. According to geologists and engineers, to stabilize an average \$150,000 home, grouting would cost an estimated \$75,000, while underpinning would be approximately \$35,000; for an average \$300,000 home, grouting is estimated to cost \$90,000, and underpinning would be \$45,000.

The insurer may limit its payment to the insured to the actual cash value of the structure, excluding the underpinning or grouting or other repair technique performed below the foundation, until the policyholder enters into a contract to perform the building stabilization and foundation repairs. The insurer must pay for the repairs after the contract is executed, but may not require the policyholder to advance payment, and may make payments directly to the contractor if written approval is obtained from the policyholder.⁵⁸ However, if the repairs have begun and the engineer selected by the insurer determines that such repairs cannot be completed within policy limits, the insurer must either complete the repairs or give policy limits to the policyholder without a reduction for the repair expenses incurred.

Insurers who have paid a claim for sinkhole loss must file a copy of the engineer/geologist report and a certification, including the legal description of the property with the county clerk, who must record the report and certification.⁵⁹ The seller of real property upon which a sinkhole claim has been made by the seller and paid by the insurer must disclose to the buyer that a claim has been paid and whether or not the full amount of proceeds were used to repair the sinkhole damage.

Findings and/or Conclusions

Frequency and Severity of Sinkhole Claims, and Affordability and Availability of Sinkhole Insurance Coverage

OIR Data Call

The OIR's 2010 data call was issued to 211 Florida property insurers, including Citizens, and requested information on all sinkhole claims occurring in Florida between 2006 and 2010. The OIR received data on 8,959 open claims and 15,712 closed claims, totaling 24,671.

As Table 1 illustrates, the results of the data call show that the problem of sinkholes in Florida has increased in both frequency and total cost during the period examined. Specifically, the data shows:

- **Total sinkhole claims increased from 2,360 in 2006 to 7,245 in 2009.**
- **Total sinkhole losses for closed and open claims combined increased from \$209 million in 2006 to \$406 million in 2009.**
- **Total losses for open and closed claims exceeded \$1.4 billion over the 4-year period.**

⁵⁷ In some instances, both remediation techniques are used.

⁵⁸ The insurer is not liable for the work performed by paying the contractor directly.

⁵⁹ S. 627.7073, F.S. The recording of the report and certification does not constitute a lien or encumbrance on the title to the real property.

TABLE 1
Marketwide Sinkhole Claims Data

	Closed Claims	Total Expense	Expense Per Claim	Total Indemnity	Indemnity Per Claim
2006	2,254	\$ 28,347,486	\$12,577	\$163,876,153	\$72,705
2007	3,334	\$ 42,190,576	\$12,655	\$263,003,683	\$78,885
2008	3,577	\$ 37,784,992	\$10,563	\$ 225,229,165	\$62,966
2009	4,671	\$ 41,870,403	\$ 8,964	\$220,270,928	\$47,157
2010	1,876	\$ 11,779,436	\$ 6,279	\$ 34,767,071	\$18,533
Total	15,712	\$161,972,893		\$907,147,000	
	Open Claims	Total Expense	Expense Per Claim	Total Indemnity	Indemnity Per Claim
2006	106	\$ 3,312,887	\$31,254	\$ 13,650,675	\$128,780
2007	508	\$11,372,170	\$22,386	\$ 52,279,347	\$102,912
2008	954	\$17,862,248	\$18,724	\$ 72,474,973	\$ 75,970
2009	2,574	\$29,525,972	\$11,471	\$114,626,167	\$ 44,532
2010	4,817	\$21,093,635	\$ 4,379	\$ 49,386,061	\$ 10,252
Total	8,959	\$83,166,912		\$302,417,223	
Grand Total	24,671	\$245,139,805		\$1,209,564,223	

One of the unique elements of the sinkhole claims process is the statutory requirement for testing under s. 627.707, F.S. The two major components of the testing procedure are the inspection and the geologist/engineering analysis and issuance of the report. Table 2 below shows that in 2006, the sum of the two testing components totaled \$20.4 million in expenses. By 2009, however, that total nearly tripled to almost \$58 million. On a per claim basis the averages have been fairly steady, but the aggregates are increasing dramatically over time, and the data indicate companies must routinely incur extensive and costly testing procedures to adjust a sinkhole claim.⁶⁰

TABLE 2
Sinkhole Testing Costs

	Claims Reported	Inspection	Engineering	Total	Per Claim
2006	2,360	\$2,335,465	\$18,077,444	\$20,412,909	\$8,650
2007	3,842	\$4,429,641	\$31,303,561	\$35,733,202	\$9,301
2008	4,531	\$3,745,527	\$35,294,972	\$39,040,499	\$8,616
2009	7,244	\$3,770,980	\$54,211,121	\$57,982,101	\$8,004

The data in Table 3 below shows a wide variation in the frequency of claims, depending on the geographic region. For example, for the period 2006-2009:

- Over 88 percent of the claims occurred in eleven counties: Hernando, Pasco, Hillsborough, Pinellas, Marion, Polk, Orange, Alachua, Citrus, Miami-Dade, and Broward.
- Over 66 percent of the claims are concentrated in just three counties—Hernando, Pasco and Hillsborough.
- The total number of claims for the three counties during this period is 11,872.
- Citizens reported 4,261 claims for these three counties, which accounts for 36 percent of the total claims.

Miami-Dade and Broward counties represented 2.9 percent of total claims from 2006-2009. However, for data submitted for the year to date, 2010, the proportion of total of claims represented by these two counties has increased to 4.2 percent. Not only are the number of claims on the rise, so is the total loss and expenses. This is statistically significant due to the fact that this area is generally not subject to sinkhole activity.

⁶⁰ Some insurers engage in testing for every sinkhole claim. Citizens estimates that it does testing in 82 percent of its claims.

TABLE 3
Claims by Geographic Region

2006 - 2009 Sinkhole Claim Breakdown							2010 Sinkhole Claim Breakdown			
County	2006	2007	2008	2009	Total	Percentage	County	2010	Percentage	Variance
Hernando	386	911	974	2,005	4,276	23.8%	Hernando	1,760	26.3%	↑ 2.5%
Pasco	825	1,160	1,147	1,540	4,672	26.0%	Pasco	1,260	18.8%	↓ -7.2%
Hillsborough	312	597	710	1,305	2,924	16.3%	Hillsborough	1,526	22.8%	↑ 6.5%
Pinellas	168	218	299	455	1,140	6.3%	Pinellas	326	4.9%	↓ -1.5%
Marion	133	163	174	297	767	4.3%	Marion	328	4.9%	↑ 0.6%
Polk	73	90	124	204	491	2.7%	Polk	217	3.2%	↑ 0.5%
Orange	64	77	109	146	396	2.2%	Orange	114	1.7%	↓ -0.5%
Alachua	70	103	93	96	362	2.0%	Citrus	124	1.9%	↓ -0.2%
Citrus	45	70	79	125	319	1.8%	Alachua	49	0.7%	↓ -1.0%
Miami-Dade	22	46	82	111	261	1.5%	Broward	149	2.2%	↑ 0.8%
Broward	10	47	83	112	252	1.4%	Miami-Dade	137	2.0%	↑ 0.6%
All Other	252	360	657	848	2,117	11.8%	All Other	704	10.5%	↓ -1.3%
Total	2,360	3,842	4,531	7,244	17,977			6,694		
Annual Increase		63%	18%	60%						

Citizens Property Insurance Corporation⁶¹

The largest writer of sinkhole coverage in Florida is Citizens, particularly in the three counties of greatest activity (Hernando, Pasco and Hillsborough). Table 4 below is a compilation of claims and premium data supplied by Citizens. Table 4 provides statewide Citizens information for the years 2005 through 2009, and further separates the data into the three counties (Hernando, Pasco, and Hillsboro) experiencing the greatest claims activity, and the remainder of the state.⁶² The data shows the large deficiency in the premium Citizens' collects to cover sinkhole claims, particularly in the most active areas. For example, in 2009, for Citizens:

- **Sinkhole losses⁶³ from Hernando were nearly twice the amount of the entire statewide premium.⁶⁴** The total premium collected statewide for the sinkhole endorsement was \$22.2 million, while in Hernando alone, the losses for sinkholes were \$40.5 million. In Pasco, the losses for sinkholes were \$24.9 million.
- **Sinkhole losses from Hernando were almost seven times the premium that was collected to cover those losses.** The total premium in Hernando to cover sinkhole losses was \$5.9 million, but the losses were \$40.5 million. For Pasco, the total sinkhole premium was \$8.3 million, but the losses were \$24.9 million, three times greater than the premium.

⁶¹ The claims and premium data are from the Personal Lines Account within Citizens which includes homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies and excludes commercial policies. Citizens did not obtain commercial specific data for this report. However, staff with Citizens did offer the following comment: they have received 235 commercial sinkhole claims in 2008 and 110 in 2009. The cost to conduct inspections and testing are similar to the personal lines data at the building level, however, the testing costs increase given there may be as many as 200 buildings on a single commercial policy. The commercial and personal lines sinkhole claims share many of the same trends, however the total exposures for commercial can be significantly greater based on the higher value of the commercial buildings. The commercial exposures are typically habitational such as condominium and apartment type risks.

⁶² During this period, Citizens had only one claim for catastrophic ground cover collapse in 2008.

⁶³ As used here, "losses" refers to indemnity costs for both open and closed claims, plus loss adjustment expenses (LAE). A loss adjustment expense (LAE) is the direct cost associated with investigating, administering, defending, or paying an insurance claim.

⁶⁴ The term "premium" refers to earned premium.

- **In Hernando, the sinkhole losses alone were almost double the entire premium to cover ALL losses (including wind, fire, theft, liability, etc.).** The entire premium from Hernando County to cover all losses (including wind, fire, theft, liability, etc.) was \$21.8 million, but the losses for sinkholes alone were \$40.5 million.
- **The pure premium for sinkhole coverage in Hernando County was \$4,500 greater than the premium that Citizens is allowed to charge for sinkhole coverage.** Pure premium is the term used to describe the amount that all policyholders with the sinkhole endorsement would need to pay to cover the sinkhole losses (with no profit or indirect costs added). The pure premium for Hernando sinkhole losses was \$5,300, but the average premium was only \$775 for this coverage. For Pasco County the pure premium was \$2,843, while the average premium was \$944.
- **The statewide pure premium for sinkhole coverage was quadruple the premium that Citizens was allowed to charge for sinkhole coverage.** The statewide sinkhole pure premium was \$295, while the sinkhole premium that Citizens was allowed to collect to cover sinkholes averaged only \$73.

TABLE 4
Citizens' Claim and Premium Data

Statewide												
Accident Year	Total Earned Premium	Sinkhole Earned Premium	% of Policies w/SH End.	Average Sinkhole Earned Premium	Coverage A Limits Avg	# Sinkhole Claims Reported	Sinkhole Claims Frequency	Sinkhole Total Indemnity Incurred	Sinkhole Total LAE Incurred	Sinkhole Average Severity	Sinkhole Pure Premium	Sinkhole Loss Ratio
2005	\$975,648,537.00	\$34,008,429.00	100%	\$112.54	\$115,540.00	660	0.218415035	\$48,474,544	\$7,677,855	\$123,412	\$186	165.1%
2006	\$1,377,160,322.00	\$51,268,303.00	100%	\$127.72	\$141,305.00	874	0.217732493	\$74,524,829	\$11,342,798	\$138,944	\$214	167.5%
2007	\$2,061,303,032.00	\$71,548,457.00	88%	\$114.75	\$171,181.00	1,599	0.256443566	\$149,924,134	\$24,306,543	\$155,286	\$279	243.5%
2008	\$1,614,729,406.00	\$32,156,400.00	67%	\$77.62	\$170,729.00	1,291	0.311643794	\$98,110,391	\$17,945,498	\$138,492	\$280	360.9%
2009	\$1,227,339,794.00	\$22,260,110.00	61%	\$73.67	\$196,340.00	1,404	0.464646799	\$71,167,114	\$18,073,341	\$91,717	\$295	400.9%
Total	\$7,256,181,091.00	\$211,241,699.00		\$103.37		5,828	0.285191942	\$442,201,012	\$79,346,035	\$130,191	\$255	246.9%

Hernando County												
Accident Year	Total Earned Premium	Sinkhole Earned Premium	% of Policies w/SH End.	Average Sinkhole Earned Premium	Coverage A Limits Avg	# Sinkhole Claims Reported	Sinkhole Claims Frequency	Sinkhole Total Indemnity Incurred	Sinkhole Total LAE Incurred	Sinkhole Average Severity	Sinkhole Pure Premium	Sinkhole Loss Ratio
2005	\$11,550,666.68	\$5,243,202.00	100%	\$497.65	\$127,646.00	113	1.072513288	\$10,738,315	\$1,473,524	\$141,998	\$1,159	232.9%
2006	\$19,532,572.05	\$9,163,634.00	100%	\$708.00	\$167,577.00	186	1.437070231	\$19,506,258	\$2,667,716	\$152,924	\$1,713	242.0%
2007	\$29,652,356.58	\$14,683,432.00	77%	\$834.48	\$190,696.00	458	2.602864287	\$56,332,727	\$8,374,251	\$174,884	\$3,677	440.7%
2008	\$21,239,078.55	\$6,741,742.00	31%	\$779.57	\$189,159.00	312	3.607770583	\$33,772,456	\$5,389,908	\$161,162	\$4,528	580.9%
2009	\$21,827,586.91	\$5,928,071.00	37%	\$775.72	\$219,142.00	520	6.804501439	\$32,967,580	\$7,538,145	\$96,672	\$5,300	683.3%
Total	\$103,802,260.75	\$41,760,081.00		\$727.97		1,589	2.769981696	\$153,317,336	\$25,443,544	\$141,537	\$3,116	428.1%

Pasco County

Accident Year	Total Earned Premium	Sinkhole Earned Premium	% of Policies w/SH End.	Average Sinkhole Earned Premium	Coverage A Limits Avg	# Sinkhole Claims Reported	Sinkhole Claims Frequency	Sinkhole Total Indemnity Incurred	Sinkhole Total LAE Incurred	Sinkhole Average Severity	Sinkhole Pure Premium	Sinkhole Loss Ratio
2005	\$42,575,922.84	\$23,042,973.00	100%	\$687.77	\$109,366.00	436	1.301337154	\$32,635,756	\$5,090,377	\$117,527	\$1,126	163.7%
2006	\$65,273,183.42	\$30,430,245.00	100%	\$894.82	\$128,133.00	506	1.487928956	\$44,823,711	\$6,798,731	\$133,737	\$1,518	169.6%
2007	\$83,280,467.55	\$38,221,389.00	72%	\$1,026.71	\$155,027.00	679	1.823944986	\$65,882,890	\$10,645,273	\$147,453	\$2,056	200.2%
2008	\$56,458,682.74	\$13,868,982.00	18%	\$954.05	\$159,278.00	505	3.473894201	\$43,436,263	\$7,262,271	\$135,921	\$3,488	365.6%
2009	\$51,538,095.96	\$8,280,012.00	22%	\$944.45	\$178,296.00	373	4.25459108	\$20,252,049	\$4,669,957	\$98,118	\$2,843	301.0%
Total	\$299,126,352.52	\$113,843,601.00		\$889.11		2,499	1.951703347	\$207,030,669	\$34,466,609	\$130,328	\$1,886	212.1%

Hillsborough County

Accident Year	Total Earned Premium	Sinkhole Earned Premium	% of Policies w/SH End.	Average Sinkhole Earned Premium	Coverage A Limits Avg	# Sinkhole Claims Reported	Sinkhole Claims Frequency	Sinkhole Total Indemnity Incurred	Sinkhole Total LAE Incurred	Sinkhole Average Severity	Sinkhole Pure Premium	Sinkhole Loss Ratio
2005	\$20,012,598.80	\$1,562,409.00	100%	\$78.57	\$140,258.00	33	0.16595424	\$2,490,031	\$346,679	\$128,941	\$143	181.6%
2006	\$47,782,503.49	\$4,139,627.00	100%	\$124.08	\$149,828.00	68	0.203824711	\$5,810,199	\$864,053	\$145,092	\$200	161.2%
2007	\$81,678,727.30	\$6,890,633.00	94%	\$142.54	\$170,114.00	245	0.50681616	\$18,938,767	\$3,721,488	\$145,258	\$469	328.9%
2008	\$49,340,382.87	\$3,359,102.00	86%	\$115.62	\$157,283.00	190	0.653977214	\$13,446,199	\$2,960,884	\$120,640	\$565	488.4%
2009	\$39,499,919.93	\$2,268,706.00	83%	\$98.28	\$170,412.00	227	0.983322504	\$10,078,224	\$3,001,866	\$72,667	\$567	576.5%
Total	\$238,314,132.39	\$18,220,477.00		\$118.53		763	0.49633764	\$50,763,420	\$10,894,970	\$114,182	\$401	338.4%

Remainder of State

Accident Year	Total Earned Premium	Sinkhole Earned Premium	% of Policies w/SH End.	Average Sinkhole Earned Premium	Coverage A Limits Avg	# Sinkhole Claims Reported	Claims Frequency	Sinkhole Total Indemnity Incurred	Sinkhole Total LAE Incurred	Sinkhole Average Severity	Sinkhole Pure Premium	Sinkhole Loss Ratio
2005	\$901,509,348.68	\$4,159,845.00	100%	\$17.46	N/A	78	0.032738582	2,610,442.00	767,275.00	129,912.19	14.18	81.2%
2006	\$1,244,572,063.04	\$7,534,797.00	100%	\$23.47	N/A	114	0.03550329	4,384,661.00	1,012,298.00	131,633.15	16.81	71.6%
2007	\$1,866,691,480.57	\$11,753,003.00	90%	\$22.59	N/A	217	0.041701578	8,769,750.00	1,565,531.00	134,224.43	19.86	87.9%
2008	\$1,487,691,261.84	\$8,186,574.00	73%	\$22.61	N/A	284	0.078449355	7,455,473.00	2,332,435.00	113,812.88	27.04	119.6%
2009	\$1,114,474,191.21	\$5,783,321.00	66%	\$22.02	N/A	284	0.108119632	7,869,261.00	2,863,373.00	89,438.62	40.86	185.6%
Total	\$6,614,938,345.34	\$37,417,540.00	N/A	\$21.95	N/A	977	0.057322191	31,089,587.00	8,540,912.00	113,230.00	23.25	105.9%

Citizens' Claims Frequency

Claims frequency is commonly measured as a percentage: the ratio of the number of claims compared to the number of policyholders in a given period. To accurately assess the trends in frequency of sinkhole claims, it is important to factor in the reduction in the number of policyholders who actually choose to purchase sinkhole coverage. Sinkhole coverage became an optional endorsement in 2007 (although ground cover collapse remains a mandatory coverage), and significant numbers of policyholders began to drop the sinkhole coverage. For some of the geographic areas where sinkhole claims are most frequent, the decrease in the percent of policyholders choosing sinkhole coverage dropped even more dramatically.

- The percent of Citizens' statewide policies with sinkhole coverage fell from 100 percent in 2006 (when it was mandatory) to 61 percent in 2009.
- In Hernando County, the percent of Citizens' policies with sinkhole coverage fell from 100 percent in 2006 to 37 percent in 2009.
- In Pasco County, the percent of Citizens' policies with sinkhole coverage fell from 100 percent in 2006 to 22 percent 2009.

As a result of this substantial reduction in the number of people choosing to pay for sinkhole coverage, the problems of the increasing number of claims is magnified by the fact that there are fewer policyholders (and therefore less total collected premium) over which to spread the increasing losses. Notwithstanding the substantial reduction in the number of policyholders choosing sinkhole coverage, there has still been a rise in the number of sinkhole claims being filed.

- **Statewide, the number of sinkhole claims more than doubled between 2005 and 2009, rising from 660 in 2005 to 1404 in 2009.**
- **In Hernando County, the number of sinkhole claims more than quadrupled, rising from 113 in 2005 to 520 in 2009.**

Given the decreasing number of people choosing to pay for sinkhole coverage as described above, the increase in sinkhole claims frequency becomes even more statistically significant.

- **Statewide, the claims frequency more than doubled, from two-tenths of a percent in 2005 to almost one-half percent in 2009.**
- **In Hernando, the claims frequency in 2009 was six times what it was in 2005, going from approximately one percent in 2005 to almost seven percent in 2009.** This means that for every 100 policyholders purchasing coverage in 2009, seven policyholders filed a claim. With the average cost for each paid claim over that period ranging from \$96,672 to \$174,884, the six-fold increase in frequency rate has a major impact on losses.
- **In Pasco, the claims frequency more than tripled over the same time frame, going from 1.3 percent in 2005 to 4.25 percent in 2009.**

Citizens' Claims Severity

The average severity of sinkhole claims is perhaps the most significant aspect of the sinkhole phenomenon. The average severity is the average amount of cost that Citizens incurred (indemnity plus LAE) for all claims for which a payment was made. The coverage A limit is the amount for which the main structure (house) is insured. A historical comparison of the average severity to the average coverage A limit demonstrates the financial strain that sinkhole claims have put on Citizens.

- **In 2005, the statewide average severity of \$123,412 actually exceeded the average coverage A limit of \$115,540.**
- In 2006 through 2009, the average severity was lower than the coverage A limit, but it remains extremely high relative to other covered perils.

In 2009, the average severity dropped significantly, but the data is based on a lower percentage of closed claims

than the data for earlier years. It should also be noted that even with the drop in average severity in 2009, the total overall losses for sinkholes continued to increase.

A contributing factor to the average severity is the cost for Citizens to engage a professional geologist or engineer to evaluate whether sinkhole activity is present at the claimant's residence.

- **The average cost for Citizens to evaluate a sinkhole has ranged from approximately \$8,061 to \$10,116 between 2005 and 2009.**
- **Citizens reports that it undertakes these geotechnical evaluations in 82 percent of the claims filed.**

This geotechnical expense is unique to sinkhole claims and is a substantial addition to the overall cost of sinkhole claims which are eroding Citizens' surplus.

Affordability of Citizens Coverage

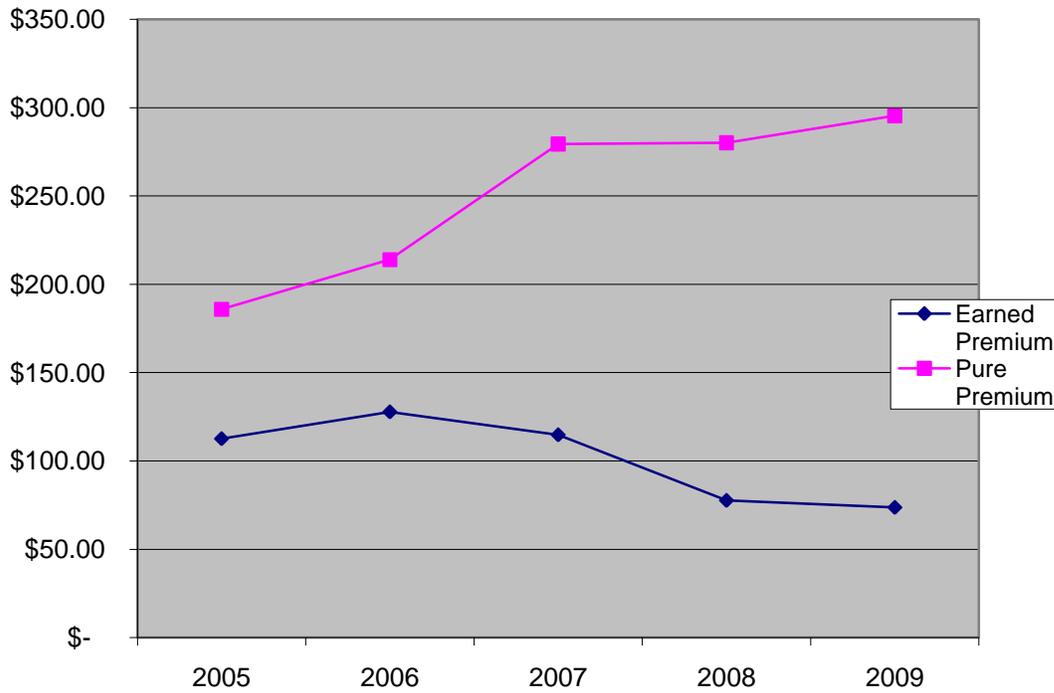
There is a great variation in the cost of Citizens' sinkhole coverage, depending on the geographic region of the state. For example, in 2009:

- The statewide average sinkhole premium was \$73.
- The average sinkhole premium in Pasco County was \$944.
- The average sinkhole premium in Hernando County was \$775.
- The average sinkhole premium in Hillsborough County was \$98.
- The average sinkhole premium for the remainder of the state (excluding Pasco, Hernando and Hillsborough) was only \$22.

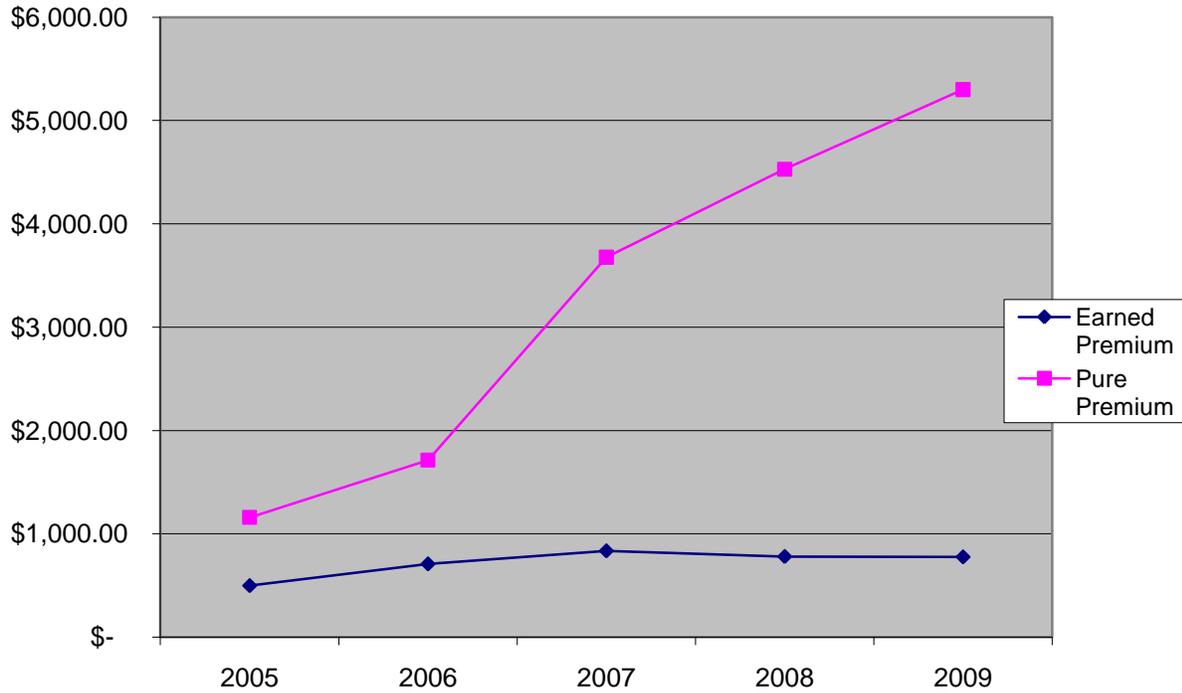
The actual premium that Citizens charges its policyholders, however, is only a small part of Citizens' actual sinkhole costs. This deficiency in premiums is worsening because Florida law prohibits Citizens from increasing the rate of any policyholder by more than approximately 10 percent, even as losses continue to rise at a much faster pace. Thus, Citizens' already deficient sinkhole premiums will fall even further behind its sinkhole losses. As a result, Citizens' surplus continues to be eroded by the deficiency in sinkhole premiums. The deficiency in Citizens' sinkhole premiums can be seen graphically on the following pages. Each of the four graphs displays the difference between the average pure premium (average loss per policyholder) for a defined geographic region and the actual premium that Citizens is allowed to collect in that region.

Citizens Earned Sinkhole Premium vs. Pure Premium

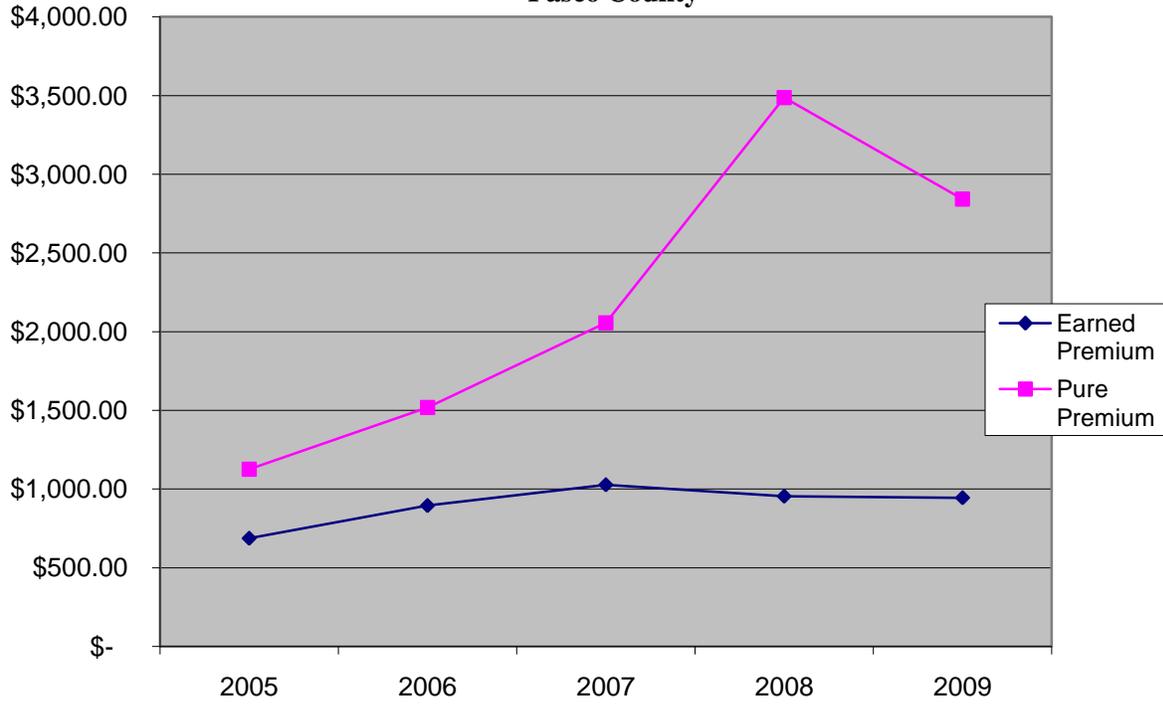
Earned Premium vs. Pure Premium Statewide



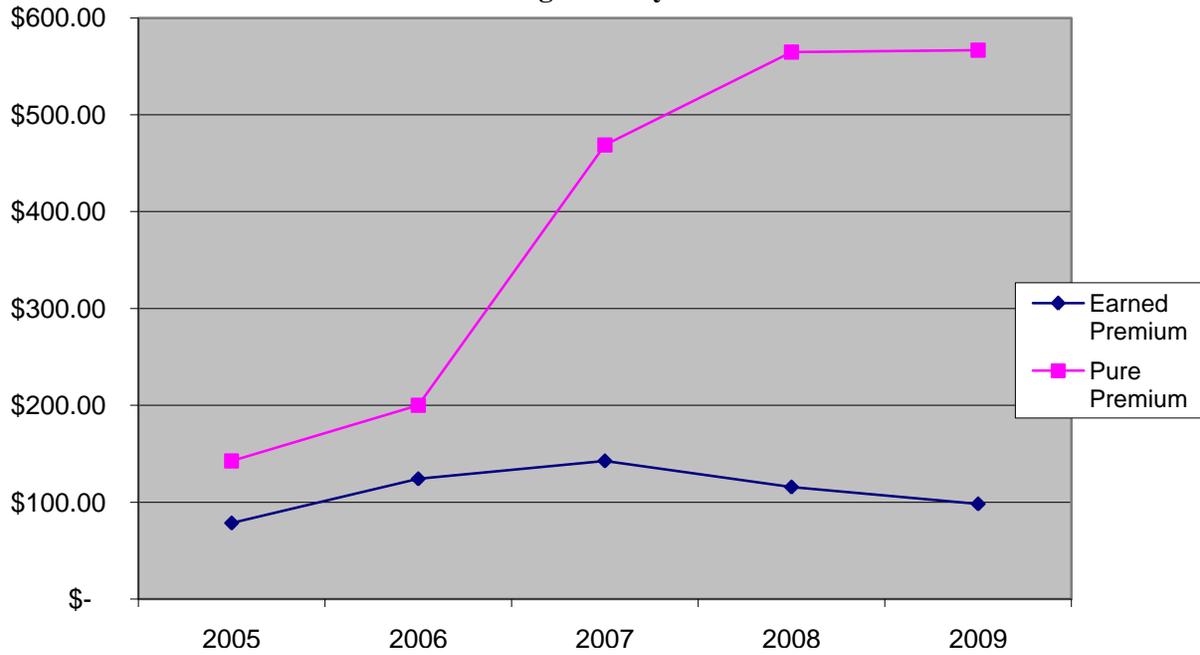
Earned Premium vs. Pure Premium Hernando County



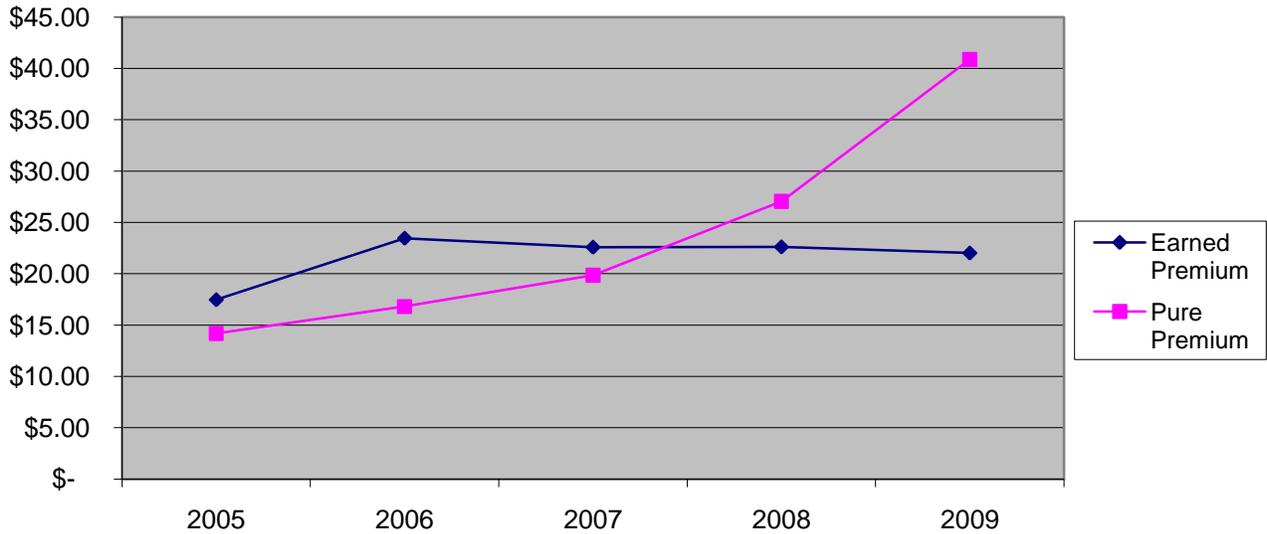
**Earned Premium vs. Pure Premium
Pasco County**



**Earned Premium vs. Pure Premium
Hillsborough County**



**Earned Premium vs. Pure Premium
Remainder of State**



In addition to the marketwide data contained in the OIR data call and the data supplied by Citizens, Committee staff sought data from individual private insurers. Two private insurers provided claims and premium data for publication in this report. Both insurers write a significant amount of sinkhole coverage, both statewide and in the areas of greatest sinkhole activity. One of the insurers is Security First Insurance Company, and the other insurer, which did not wish to be identified by name, will be referred to as Insurer A. The separate claims data for both of these insurers show the same trends demonstrated by the OIR marketwide data call and by the Citizens data.

Security First Insurance Company

Security First provided detailed policy and claim information⁶⁵ for the years 2008 through 2010. Table 5 shows that over that period:

- **Statewide, Security First sinkhole losses were more than double its sinkhole premium from 2008 through 2010.** Security First incurred \$9 million in sinkhole losses on a statewide basis, but had only \$4.1 million in earned sinkhole premiums to cover those losses.
- **In Hernando County, Security First sinkhole losses were seventeen times the premium from 2008 through 2010.** Security First incurred \$2.3 million in sinkhole losses, but had only \$133,326 in earned premiums to cover those losses.
- **For 2010 (to date), the losses were 32 times the premium in Hernando County.** The premium for Hernando County was \$30,467, while the losses were \$979,152.
- **For 2010, the pure premium (average loss per insured house) in Hernando County was \$12,232, while the average earned premium per house was \$381.**
- **For 2010, the pure premium in Pasco County was \$4,688, while the average premium per house was \$335.**

⁶⁵ The Security First claim information is based on both open and closed claims. The incurred losses include LAE.

TABLE 5
Security First Insurance Company Data

STATEWIDE

POLICY YEAR	SINKHOLE PREMIUM	SINKHOLE INCURRED LOSSES	SINKHOLE AVERAGE EARNED PREMIUM	SINKHOLE PURE PREMIUM	SINKHOLE LOSS RATIO
2008	\$1,190,490	\$1,342,992	\$29	\$32	112.8%
2009	\$1,592,441	\$4,145,165	\$40	\$104	260.3%
2010	\$1,349,569	\$3,092,893	\$51	\$117	229.2%
TOTAL	\$4,132,469	\$9,020,233			218.3%

HERNANDO COUNTY

POLICY YEAR	SINKHOLE PREMIUM	INCURRED LOSSES	SINKHOLE AVERAGE EARNED PREMIUM	SINKHOLE PURE PREMIUM	SINKHOLE LOSS RATIO
2008	\$34,029	\$32,154	\$717	\$678	53.9%
2009	\$68,830	\$1,281,580	\$538	\$10,467	919.6%
2010	\$30,467	\$979,152	\$381	\$12,232	1603.6%
TOTAL	\$133,326	\$2,292,886			881.5%

PASCO COUNTY

POLICY YEAR	SINKHOLE PREMIUM	INCURRED LOSSES	SINKHOLE AVERAGE EARNED PREMIUM	SINKHOLE PURE PREMIUM	SINKHOLE LOSS RATIO
2008	\$59,680	\$86,011	\$346	\$499	144.1%
2009	\$139,360	\$1,376,483	\$474	\$4,678	987.7%
2010	\$61,060	\$854,822	\$335	\$4,688	1400.0%
TOTAL	\$260,100	\$9,020,233			890.9%

HILLSBOROUGH COUNTY

POLICY YEAR	SINKHOLE PREMIUM	INCURRED LOSSES	SINKHOLE AVERAGE EARNED PREMIUM	SINKHOLE PURE PREMIUM	SINKHOLE LOSS RATIO
2008	\$428,822	\$522,631	\$207	\$252	121.9%
2009	\$407,922	\$907,709	\$220	\$488	222.5%
2010	\$312,102	\$436,667	\$316	\$442	139.9%
TOTAL	\$1,148,846	\$2,256,405			196.4%

REMAINDER OF THE STATE

POLICY YEAR	SINKHOLE PREMIUM	INCURRED LOSSES	SINKHOLE AVERAGE EARNED PREMIUM	SINKHOLE PURE PREMIUM	SINKHOLE LOSS RATIO
2008	\$667,928	\$702,196	\$17	\$18	105.1%
2009	\$979,329	\$579,394	\$26	\$15	59.2%
2010	\$945,940	\$822,251	\$37	\$33	86.9%
TOTAL	\$2,593,197	\$2,153,625			83.0%

Insurer A

Insurer A is a relatively new entrant to the personal residential market. By year's end 2007, Insurer A had received a total of 5 sinkhole claims. In 2008, 236 sinkhole claims were reported, while in 2009, 538 sinkhole

claims were reported. Thus far in 2010, 466 sinkhole claims have been reported through September 30, which projects to 621 claims on an annualized basis.

As of September 30, 2010, Insurer A had handled more than 1,200 sinkhole claims over the last three years, and that number continues to grow. The overwhelming majority of reported claims have come from Hernando (460), Hillsborough (364), and Pasco (396) counties, followed by Pinellas (62) and Broward (39) counties. These increases in claims reflect an actually greater increase in frequency because during this period, Insurer A's policy count has declined significantly as it reduces its personal residential business.

When considering the continuing increase in frequency, it is important to keep in mind the relative magnitude of sinkhole losses and the cost that the insurer must incur to process each claim. As an example of the relative cost, for Insurer A in 2008 and 2009, the **average loss** for combined All Other Perils (AOP) was approximately \$5,500 per loss whereas the **average expense** per sinkhole claim was over \$11,000.⁶⁶ Thus, just the expense incurred by Insurer A to address one reported sinkhole claim (not the amount paid to the policyholder) was more expensive than the entire amount of two average AOP losses (\$5,500 plus \$5,500).

Availability of Sinkhole Coverage

Insurers are required to cover catastrophic ground cover collapse and must make available to policyholders, for an appropriate additional premium, sinkhole coverage for losses on any structure, including personal property contents. Most private insurers, and Citizens, have implemented, or are in the process of implementing, some form of property (including home) inspection program in which the property must meet specified criteria to qualify for sinkhole coverage. As more companies adopt pre-coverage inspection requirements, sinkhole coverage will continue to become less available.

For example, one insurer (Security First Insurance Company) will not bind coverage until the property passes their inspection program which is limited to zip-code areas where the insurer has had prior sinkhole claims. The program includes an inspection of the structure's interior, exterior, grounds, and adjacent property.

In addition to these inspection programs, it has been reported to Committee staff that a number of private insurers have ceased writing new business in the areas of greatest sinkhole claims activity. This is borne out by the fact that in Hernando and Pasco counties, Citizens' share of the homeowners insurance market has increased substantially in each of the last two years. In Hernando, the number of Citizens' homeowners policies increased from 19,448 to 29,255 between 2008 and 2010. In Pasco, the number of such policies increased from 40,028 to 55,056 during the same period.

Rate Deficiency

Adverse selection is the phenomenon wherein large numbers of lower risk policyholders begin leaving their coverage group, leaving the group with a significantly greater portion of higher risk policyholders. As a result, the total claims are spread over fewer policyholders, and rates must go up to cover the costs being incurred, which in turn compels even more of the lower risk policyholders to abandon the coverage. In Citizens, the adverse selection is muted somewhat by the statutory limitation on rate increases of 10 percent (the deficiency in sinkhole rates erodes the surplus that Citizens must accumulate to cover all other losses). For the private market, the OIR must approve rate increases that are actuarially validated by losses, so theoretically, a private insurer should be able eventually to charge rates that cover its sinkhole losses. In practice, however, insurers' sinkhole losses are continuing to increase faster than the insurer can compile and submit its historical data for review by the OIR. As a result, by the time an insurer can obtain OIR approval to implement new rates, the new rates are already insufficient.

Mine Subsidence Programs

Previous studies of sinkholes and the insurance market have identified establishing a state-run facility as a means to address challenges faced by the Florida insurance market. In 1992, the Florida State University Center for

⁶⁶ "All Other Perils" is a term referring to other covered perils (wind, fire, etc.) under an insurance policy.

Insurance Research conducted a study on sinkholes and recommended establishment of a sinkhole facility similar to the Illinois Mine Subsidence Fund.⁶⁷ The 2005 Florida State University Insurance Study of Sinkholes also identified the establishment of a sinkhole facility to address property insurance availability in Florida.⁶⁸ The following section is a summary of facilities established in other states that could serve as a model if Florida chooses to establish a sinkhole insurance facility or program.

Six states have established facilities to pay claims related to mine subsidence. Pennsylvania developed the first mine subsidence facility in 1961, Illinois developed a program in 1979, and West Virginia, Kentucky, Indiana, and Ohio followed suit during the 1980's.

Mine subsidence claims and sinkhole claims are similar in that both result from surface lands collapsing into subterranean voids, potentially causing significant damage to the insured structure. Repairs to a structure that has incurred mine subsidence damage generally entails repair of cosmetic damages (wall cracks; etc.) and repair or replacement of the foundation, similar to the repairs needed for structures affected by a sinkhole.

If Florida establishes a sinkhole state facility or program, it would at least initially handle many more claims for greater amounts of money than any of the mine subsidence funds. The costs associated with investigating a sinkhole claim, payment of a sinkhole claim, and settling a disputed sinkhole claim combined with the increasing number of sinkhole claims in Florida likely will require a facility that is both larger and charges higher premiums than the mine subsidence state facilities. The number of sinkhole claims annually in Florida (7,245 in 2009) dwarfs the number of mine subsidence claims in states with facilities such as Pennsylvania (227 claims in 2008) and Kentucky (20 claims in 2009).

The cost of sinkhole claims in Florida is also larger than average ground subsidence claims in states with facilities. The average closed claim reported to the OIR for the period 2006-2010 was \$124,502 for each of the 15,622 claims reported. In Pennsylvania the average claim in 2008 was \$41,507 for the 16 claims that were paid and Kentucky only paid one of the 20 claims filed in 2009 for \$89,158. The key difference between a mine subsidence claim and a sinkhole claim is that a sinkhole claim almost always includes remediation of the sinkhole conditions through the pumping of grout to fill the subterranean void causing the sinkhole or using helical piers to anchor the structure's foundation to solid limestone below the surface. Mine subsidence claims generally do not include remediation of the ground, which is often specifically excluded from coverage. Mine subsidence coverage is optional in most states with facilities, though some states limit availability to specified counties.

Mine Subsidence Funds Acting as Reinsurers

Five of the six mine subsidence funds act as a reinsurer for mine subsidence claims, reimbursing private market insurers for verified mine subsidence losses after payment has been made to the policyholder. Each of the reinsurance funds has varying degrees of control over the mine subsidence insurance market. For example, the Illinois Mine Subsidence Fund⁶⁹ (Illinois Fund) exercises extensive control over the market, acting as a reinsurer for mine subsidence losses, establishing rates and rating schedules, assessing applicant eligibility, and investigating claims.⁷⁰ Illinois automatically includes mine subsidence coverage in counties certified as being susceptible to mine subsidence losses, though the insured may waive the coverage. All insurers writing property and casualty coverage in Illinois are required to enter into a reinsurance contract with the Illinois fund and to offer mine subsidence coverage. Mine subsidence coverage in Illinois does not include losses related to land, thus costs for below-ground repairs are not recoverable under the coverage.

Mine Subsidence Funds Acting as a Direct Insurer

The Pennsylvania Coal and Clay Mine Subsidence Fund (Pennsylvania Fund) operates as a direct insurer of mine subsidence. The Pennsylvania Fund performs all standard insurance functions including establishing premiums,

⁶⁷ FSU 1992 Study.

⁶⁸ FSU 2005 Report.

⁶⁹ 215 Ill. Comp. Statutes 5/801.1 through 817.1.

⁷⁰ The Illinois Fund is organized as an independent entity with an appointed Board of Directors and overseen by the Illinois Division of Insurance.

collecting premiums, underwriting, along with investigating, handling, and settling claims. The Pennsylvania Fund currently provides up to \$500,000 in residential coverage⁷¹ and has a \$250 deductible for residential structures⁷² and limits coverage to the structure, with personal property not covered.

Issues Related to the Structure of the Proposed Sinkhole Facility or Program

The FSU 2005 Report identified a number of issues related to the creation of a Florida sinkhole insurance facility.⁷³ The issues identified in that study remain relevant should the Legislature authorize creation of such a facility. Those issues were the structure of the proposed facility, the method of operation, financing the facility, the functions of the facility, and the type of coverage offered by the facility.

The 2005 report noted that insurance facilities generally are either established as free-standing operations organizationally separate from the state government that created them. Examples of this approach include Citizens Property Insurance Corporation, the Florida Automobile Joint Underwriting Association, and the Florida Worker's Compensation Joint Underwriting Association. A second approach would be to establish the sinkhole fund within a state agency. The Florida Hurricane Catastrophe Fund (the FHCF is within the State Board of Administration) and the reinsurance based mine subsidence funds (such as in Illinois) are examples of this approach. A third approach would be to establish the sinkhole facility as a component of an existing entity such as the FHCF or Citizens. As the 2005 report noted, the advantage of this approach is that it may avoid duplicating functions that these entities already perform. However, a disadvantage may be that adding a new responsibility to one of these facilities could have a detrimental effect on their primary mission.⁷⁴

Another key issue is determining how to initially finance the sinkhole facility and how the facility will respond if it incurs a financial shortfall. The 2005 report noted that several of the mine subsidence programs were supported by state appropriations until the funds became self-sufficient. The Legislature would need to decide the funding source if it chooses to establish a sinkhole facility. Similarly, the Legislature would need to decide how the entity will obtain money to meet its financial obligations in the event it experiences a shortfall. Options include apportioning facility deficits among insurance companies based on market share, which is the traditional method used for most similar facilities in Florida and elsewhere.

In addition, should the Legislature decide to initiate a sinkhole facility or program, it would need to consider what types of losses will be covered, the coverage limit, what types of property will be covered, whether to pay for structural losses at replacement cost or actual cash value, and the ramifications if repairs to the structure are not made.

Areas of Concern

The following topics have been identified by committee staff as areas of concern regarding the sinkhole claims process based on interviews and data collected from stakeholders.

Failure of Sinkhole Claimants to Repair Property or Stabilize Land

As noted earlier in this report, representatives with the OIR, Citizens, as well as insurers, believe that a major driving force for the significant increase in sinkhole claims is the fact that many policyholders are incentivized to file such claims because they can keep the cash proceeds from the claim instead of effectuating repairs to their home or remediating the land. This dilemma is illustrated as follows:

- In a study completed by HomeWise Preferred Insurance Co. (HomeWise), a total of 55 sinkhole claims were analyzed after-the-fact to determine if repairs were made. For claimants who had representation (public adjuster or attorney), 79 percent of homes were not repaired and out of that group, 58 percent of insureds paid off their mortgage or sold their property. The amount HomeWise paid out in those 55 claims was \$10.3 million, while expenses amounted to \$686,390.36.

⁷¹ The rates for non-residential structures are twice that of residential structures.

⁷² The deductible is \$500 for non-residential policies.

⁷³ FSU 2005 Report.

⁷⁴ FSU 2005 Report.

- A similar analysis was performed by a Florida property insurer which analyzed its paid sinkhole claims for 2009 and found that insureds were not repairing sinkhole damaged homes. Also, some insureds were selling their unrepaired homes to buyers who in turn would file sinkhole claims with their insurer, therefore continuing this cycle. For example, out of 53 sinkhole claims, only 10 claimants pulled repair permits, but only 5 completed repairs. Seven homes were sold without repairs being performed.

The failure of sinkhole claimants to make repairs or stabilize land has concerned many property appraisers, most notably in Hernando and Pasco counties.⁷⁵ Both property appraisers have indicated that this problem has had a damaging effect on the market values of affected homes which could lead to financial instability of local governments.⁷⁶ For example, the Hernando Property Appraiser has estimated that since 2005, the county has lost \$173 million in total market value as a result of value adjustments to sinkhole homes. This figure is a small fraction of the real cost because it is largely based on homeowners contacting the appraiser's office seeking a reduction in the value of their property (and admitting they made no repairs). According to the Property Appraiser, Alvin Mazourek, the increase in the number of sinkhole claims in the county over the past 5 years is approaching "epidemic" proportions. Homeowners choose to pay off their mortgages and other debt and the sinkhole itself is "never addressed." Appraiser Mazourek asserts that the "majority of the sinkholes we see include minor structural distress and are not compromising the integrity of the structures safety." He suggests the following: that property owners be required to repair their houses and stabilize their land in cases where there are insurance payouts because this mandate would protect the legitimate sinkhole victim and also discourage those seeking only monetary benefits who would otherwise pocket money and leave their property unrepaired.

The Pasco County Property Appraiser, Mike Wells, has voiced these same concerns, citing a reduction in property values in his county of over \$50 million. He also expressed frustration with the apparent lack of certainty in the sinkhole testing process, citing situations where one testing firm concludes that there is no sinkhole loss, but another testing firm will find that there is a sinkhole on the same property within weeks of the initial testing.

Mr. Wells suggests that a standardized payment system be established basing the amount of money insurers pay out for legitimate sinkhole claims on a percentage payout basis, "rather than awarding a hyper inflated cost to cure" the problem. For example, if a home requires minimal repair, the property owner should receive 20 percent of replacement cost or if it requires grouting, a maximum of 30 percent of replacement cost.⁷⁷

Requiring Policyholders to Remediate or Repair

The state has a public policy interest in ensuring that policyholders, who have legitimate sinkhole losses, use insurance proceeds to repair their homes and stabilize their properties. The failure of one policyholder to remediate sinkhole conditions underlying his or her property can subsequently affect their neighbors who may also experience sinkhole loss as the soils underlying the neighbor's property begin to ravel downward. Additionally, as noted above, property values of nearby homes may be negatively affected. The statutory provisions requiring the policyholder to enter into a contract before receiving insurance proceeds are designed to ensure that such proceeds from a sinkhole loss are used to remediate sinkhole conditions. However, these statutory provisions have little relevance when the policyholder contests the claim.

When the insurance company and the policyholder settle a claim, the settlement agreement is unlikely to contain any condition that settlement proceeds be used to remediate the property. Any attempt to require settlement proceeds to be used to remediate sinkhole conditions may be interpreted to be an unconstitutional impairment of contract that impermissibly limits the right of the parties to the insurance contract to discharge their respective

⁷⁵ Hernando County is located along the central west coast of Florida directly north of Pasco County. The county has a population of 171,233 people and 81,391 housing units based on the 2009 US Census. Pasco County is south of Hernando county on the central west coast of the state, has a population 471,709 people with 222,696 housing units according to the 2009 US Census.

⁷⁶ Letter dated October 18, 2010, from Alvin R. Mazourek, Property Appraiser of Hernando County, to Senator Mike Fasano. Letter dated November 22, 2010, from Mike Wells, Pasco County Property Appraiser, to Committee staff.

⁷⁷ He suggests defining ranges based on the amount of sag of the foundation or foundation crack size. The claim payment should also not compensate for inadequate foundations, i.e., homes not meeting building codes at time of construction.

rights and liabilities via a settlement contract agreement. Insurers have represented to Committee staff that under current conditions, rather than require that the policyholder use claim proceeds for remediation, they prefer to make a cash payment settlement because it assures that they will not be subject to potential liability that exceeds the limit of the insurance contract. Insurers cite three main factors that make them unwilling to impose on the policyholder the statutory requirement to remediate.

- By requiring the policyholder to remediate, an insurer may be subject to a bad faith claim,⁷⁸ that is avoided by a cash settlement that explicitly resolves all issues;
- If the claim is litigated and the policyholder prevails, the insurer must pay attorney's fees to the policyholder under the "one-way" attorney fee law;⁷⁹
- Under current law, if remediation is initially undertaken, but during the process it is determined that remediation will cost more than the policy limits, the insurer can either complete the remediation at the greater cost, or tender full policy limits in addition to absorbing the remediation costs already incurred.

The only way to ensure that sinkhole proceeds are used to remediate sinkhole conditions is to remove the factors that compel insurers to settle without imposing the current statutory requirement that the policyholder must remediate the sinkhole activity for which the claim is paid. Accordingly, the legislature could achieve the consistent imposition of the requirement to remediate by either: changing the three current provisions (insurer liability for remediation costs exceeding policy limits, bad faith claims in disputes involving sinkhole coverage, and the one-way application of attorney fees) that compel private insurers to enter into cash settlements, or; ceding all sinkhole coverage responsibility to a government entity that would be immune from bad faith claims and one-way attorney fees.

Sinkhole Statutory Provisions

Various provisions of the statutes governing insurance for sinkhole loss are the subject of ongoing litigation between policyholders and insurers. This section focuses on statutory provisions that appear to be fostering litigation between the parties, are creating uncertainty as to the meaning of the statutory language, or have inefficiencies that can be remedied through amendment.

Presumption of Correctness

Section 627.7073(1)(c), F.S., states that a sinkhole report resulting from statutorily compliant sinkhole testing is to be presumed correct. Currently on appeal before the Florida Supreme Court is Warfel v. Universal Ins. Co. of N.A., concerning whether the statutory presumption of correctness shifts the burden of proof to the insured or merely requires the insured to produce evidence regarding the facts at issue, at which point the presumption disappears.

The Florida Statutes classify a presumption of correctness in one of two ways: a presumption affecting the burden of proof or a presumption affecting the burden of producing evidence (a "vanishing presumption") that does not shift the burden of proof. The latter presumption is called a "vanishing presumption" because it only applies until the other party produces contrary evidence, at which point it vanishes. The test for determining which type of presumption is being used is found in s. 90.303, F.S., which states that a presumption merely affects the burden of producing evidence (a "vanishing presumption") unless the statute states otherwise and is enacted to implement public policy.

Section 627.7073(1)(c), contains the presumption of correctness that is in dispute. If statutory testing complies

⁷⁸ The effect of a bad faith claim allows the insured to sue beyond the limits of their policy and for tort-type, as opposed to contract-type, damages.

⁷⁹ Payment of attorney's fees can be costly to the insurer. Such fees are calculated using the "loadstar" approach which is the number of hours expended by the attorney on the case, multiplied by an hourly rate. In addition, a contingency risk multiplier may be applied to the loadstar amount which means the loadstar fee is multiplied by an amount ranging from 1 to 2.5, if the court finds that the policyholder would not have been able to obtain competent counsel without the application of the multiplier.

with the standards of s. 627.7072, F.S., then “[T]he respective findings, opinions, and recommendations of the professional engineer or professional geologist as to the cause of distress to the property and the findings, opinions, and recommendations of the professional engineer as to land and building stabilization and foundation repair shall be presumed correct.”

In *Warfel*, the insurer (Universal) denied the claim of Michael Warfel in reliance on a sinkhole report produced by its engineering and geological experts that determined that a sinkhole loss had not occurred. At trial, Universal produced experts from the firm that produced the sinkhole report to testify that a sinkhole loss had not occurred and Mr. Warfel produced experts who testified that a sinkhole loss had occurred. Universal contended to the court that the presumption of correctness in s. 627.7073(1)(c), F.S., shifts the burden of proof to Mr. Warfel. The trial court agreed and instructed the jury to presume that the sinkhole report relied on by Universal is correct unless the Plaintiff can prove by a preponderance of the evidence that the findings, opinions and conclusions of the sinkhole report are not correct. The trial court verdict was in favor of Universal.

On appeal, the Second District Court of Appeal ruled that there is “no clear Legislative expression that public policy compels a homeowner to shoulder the burden to disprove the findings and recommendations of the insurer’s engineers and geologists. The Court said it must conclude that the presumption of correctness was a “vanishing presumption” because the Legislature did not include statutory language stating that the presumption of correctness in s. 627.7073, F.S., shifted the burden of proof in order to implement public policy and thus the Court must conclude that the presumption is a vanishing presumption. The dissenting opinion noted Florida Supreme Court precedent holding that when a presumption embodies the social policy of the state, it should be considered a presumption intended to shift the burden of proof even absent an express statement to that effect in the statute. The issue is currently on appeal to the Florida Supreme Court.⁸⁰

The statutory requirements for the handling and investigation of sinkhole claims give deference to the findings and recommendations of the engineering and geological professionals retained by an insurance company to investigate a sinkhole claim. The provisions are designed to improve the availability and affordability of sinkhole coverage by reducing litigation. When a sinkhole loss is verified in the sinkhole report, s. 627.707(5)(a), F.S., requires the insurer “to pay to stabilize the land and building and repair the foundation” of the policyholder “in accordance with the recommendations of the professional engineer as provided under s. 627.7073....” The Second DCA’s decision in *Warfel* eliminates a similar presumption in favor of the insurer when the report is challenged in a court of law. Regardless of the result of the Florida Supreme Court decision in *Warfel*, the Legislature should consider clarifying the applicability of the presumption of correctness in s. 627.7073, F.S.

In Consultation With the Policyholder

Florida Statute 627.707(5), states that when a sinkhole loss is verified, the insurer must pay for repairs recommended by the engineers and geologists retained by the insurer “in consultation with the policyholder.” The statute is arguably ambiguous as to what the statute is requiring when it directs the insurer to conduct repairs “in consultation with the policyholder.” Some parties believe that the phrase may mean as little as providing notice to the policyholder regarding payment of claim proceeds to conduct repairs. Some insureds and their representatives assert that the phrase requires the insurance company essentially reach an agreement with the policyholder regarding the method of repair to be used to remediate the confirmed sinkhole.

The issue has become the subject of litigation in sinkhole claims. Committee staff has examples of lawsuits in which the plaintiff applies to the court for declaratory relief to determine the parties’ rights under the insurance contract, asserting that a dispute exists between the parties over what constitutes the necessary repairs to the insured property. The lawsuits cite to the alleged failure of the insurer’s engineering firm to develop the sinkhole remediation plan “in consultation with the policyholder” when making their repair recommendations. Clarification of the “in consultation with the policyholder” language may serve to remove the differing interpretations by the parties to the insurance contract.

Structural Damage

Section 627.706, F.S., defines a sinkhole loss as “structural damage to the building, including the foundation,

⁸⁰ *Universal Ins. Co. of N.A. v. Warfel*, SC10-948 (July 7, 2010).

caused by sinkhole activity.”⁸¹ The definition of “sinkhole loss” in s. 627.706(2)(c), F.S., states the type of loss that insurers are required to provide coverage for. Pursuant to the statutory definition of “sinkhole loss,” insurers are required to provide coverage for “structural damage to the building, including the foundation, caused by sinkhole activity.” The statute does not define the term “structural damage.” The result is uncertainty as to how the Florida Statutes define sinkhole loss and precisely what coverage Florida Statutes mandate insurers make available.

The term “structural damage” is currently being defined in one of two ways. Some parties state that the term means simply “damage to a structure.” Using this definition, sinkhole coverage would provide reimbursement for any damage to the insured structure, including its foundation, caused by sinkhole activity. The second definition asserts that structural damage is damage that affects the load bearing capacity of the structure. Under this definition, an insurer is only required to make coverage available for damage that affects the load bearing capacity of the structure.

The 2007 Florida Building Code (FBC): Existing Building (1st Printing) indicates that structural damage generally refers to damage that affects the load bearing capacity of the structure. The FBC defines “structural” to mean “any part, material or assembly of a building or structure which affects the safety of such building or structure and/or which supports any dead or designed live load and the removal of which part, material or assembly could cause, or be expected to cause, all or any portion to collapse or fail.” The FBC for existing buildings also defines a condition called “substantial structural damage” which essentially constitutes damage that reduces the load-bearing capacity of the structure beyond a certain level.⁸² For purposes of the FBC, when substantial structural damage occurs, the repairs must comply either with specified requirements for loads contained in the Florida Building Code.⁸³ The FBC definitions of “structural” and “severe structural damage” indicate that when the term “structural” is used in an engineering context, the term refers to the load bearing capacity of a building.

Statute of Limitations

Under current law, there is no Florida statute of limitations for making a property insurance claim. There is only a statute of limitations for bringing a breach of contract claim which is 5 years. Depending on the facts of the case, a breach can be a denial of benefits or denial of coverage under the insurance policy. For example, in sinkhole claims, an insured may make a claim at any time and, if the insurer denies the claim or commits some other alleged breach of the contract, the insured still has 5 years from the date of the breach to bring the breach of contract suit. Courts have upheld the filing of claims as late as 5 years after the date of loss and no clear limit currently exists. The defenses of prejudice or failure to mitigate could exist but are rare and difficult to argue in a sinkhole case because (1) the structural damages are typically minimal and do not significantly increase with time, and (2) the majority of the expense related to a sinkhole loss is the stabilization cost, which is a fixed cost (but for inflation).

Setting an actual date of loss for a sinkhole claim is difficult and often depends on the truthfulness of the insured in stating when possible sinkhole-related damage first appeared. Unfortunately, this allows some insureds to engage in questionable practices in an effort to maximize recovery. One such practice is backdating the date of loss to pre-June 1, 2005, to avoid the statutory requirement to perform repairs. Insureds seeking maximum policy limits may choose a date of loss under the policy term with the greatest limits. Policyholders with Citizens may attempt to circumvent Citizens’ bad faith immunity by alleging a sinkhole date of loss under the prior insurer’s policy. Citizens has recognized the difficulty in accurately dating a sinkhole loss by sometimes offering to settle a

⁸¹ The statutory definition also states that contents coverage is only applicable if there is structural damage to the building caused by sinkhole activity.

⁸² 2007 Florida Building Code: Existing Building (1st Printing), Section 202. The definition of Substantial structural damage is “a condition where: 1. In any story, the elements of the lateral-force-resisting system have suffered damage such that the lateral load-carrying capacity of the structure in any horizontal direction has been reduced by more than 20 percent from its predamaged condition, or 2. The capacity of any vertical load-carry component, or any group of such components, that supports more than 30 percent of the total area of the structure’s floor(s) and roof(s) has been reduced more than 20 percent from its predamaged condition and the remaining capacity of such affected elements, with respect to all dead and live loads, is less than 75 percent of that required by the Florida Building Code, Building for new buildings of similar structure, purpose and location.

⁸³ 2007 Florida Building Code: Existing Building (1st Printing), Sections 506.2.2, 506.2.3, 506.2.3.1.

sinkhole claim on a pro-rata basis with the prior insurer. However, this possible solution is much more difficult for a private market insurer because it is subject to bad faith allegations if attempting this strategy.

Disputed Sinkhole Claims/Neutral Evaluation Program

The Department of Financial Services (DFS or department) administers the neutral evaluation program for sinkhole disputes.⁸⁴ The insurer must notify the policyholder of his or her right to participate in a neutral evaluation which is nonbinding, but mandatory, if requested by either party, and the insurer must pay all costs associated with the program. The party requesting the neutral evaluation must file with the DFS which provides each party with a list of certified evaluators. The evaluators must be professional engineers or professional geologists, be fair and impartial, and attempt to resolve the dispute at issue. The parties mutually select a neutral evaluator from the list provided by the DFS.⁸⁵

The neutral evaluator must prepare a report, provided to all parties and the DFS, stating whether the sinkhole loss has been verified or invalidated. If the existence of sinkhole loss is verified, the report must include the evaluator's opinion regarding the need for and the estimated costs of stabilizing the land and any covered structures as well as appropriate remediation or structural repairs. The evaluator's report is admissible in any subsequent action or proceeding relating to the sinkhole claim; however, the evaluator's recommendation is not binding on any party and the parties retain access to court.⁸⁶

The DFS has received a total of 2,505 requests for neutral evaluations dating from the inception of the program in 2007.⁸⁷ The number of neutral evaluations has increased from 32 in 2007 to 1,310 for 2010. Of the 1,555 neutral evaluations which have been completed, 1,012 were found to be confirmed sinkhole losses by the neutral evaluator and 543 were not confirmed sinkhole losses. There are 950 evaluation requests currently pending. Currently, there are only 30 neutral evaluators (nine geologists and 21 engineers) who have been selected by the DFS to participate in the program which involves a forty hour mandatory training course in mediation.

Individuals involved in the neutral evaluation process have expressed the following concerns:

- Neutral evaluators may not be truly neutral, and in fact may be biased because there are no conflict of interest standards. Neutral evaluators may work, on a contract basis, for an insurer or for a trial attorney (doing testing or remediation). The requirement that an evaluator be "fair and impartial" is not defined.
- Neutral evaluators are sometimes asked to render opinions outside of their area of expertise. For example, a professional geologist may be assigned to a neutral evaluation where the key issue is the estimated cost to perform structural repairs. Therefore, neutral evaluators should be allowed to appoint experts in engineering or geology (or other related fields) to facilitate their decisions as to disputed issues that are beyond the individual expertise of the neutral evaluator.
- The scope of duties of a neutral evaluator are not clear. For example, some evaluators actually visit the site of the property which is the basis of the sinkhole claim, while others never do. Further, the issues to be determined by the neutral evaluator should be clearly specified in statute.
- Neutral evaluation makes it difficult to utilize the appraisal clause of the insurance policy.
- Time frames imposed by statute need to be revised pursuant to recommendations by DFS staff so that the evaluation procedure is conducive to settling claims.
- The funding for DFS to operate the neutral evaluation program does not cover its administrative costs.

⁸⁴ S. 627.7074, F.S.

⁸⁵ The department will appoint the neutral evaluator if the parties cannot agree.

⁸⁶ If a policyholder declines to follow the recommendations of the neutral evaluator (and the insurer complies with such recommendations), the insurer is not liable for attorney's fees, unless the policyholder obtains a more favorable judgment at trial. Also, the insurer is not liable for extracontractual (bad faith) damages related to issues determined by the neutral evaluation. If the neutral evaluator verifies a sinkhole and recommends costs that exceed the amount the insurer has offered to pay the policyholder, the insurer is liable for up to \$2,500 in attorney's fees for the claimant attorney's participation in the neutral evaluation process.

⁸⁷ Ch. 2006-12, L.O.F. The DFS established the program in 2007. Data provided by DFS on September 28, 2010.

Building Code Standards

The Florida Building Commission (Commission) is authorized to adopt and maintain the Florida Building Code (Code) as a single, unified state building code consisting of documents that apply to the design, construction, modification, repair, or demolition of public or private buildings in order to protect the public safety, health, and welfare of the citizens of Florida.⁸⁸ The Commission is charged with the responsibility of amending and updating the Code every three years to make recommendations on which laws should be revised or repealed to maintain consistency with the Code, and can approve technical amendments to the Code once each year. The current building code in effect is for 2007.

Experts in the field of geology and engineering relating to sinkholes assert that changes to Florida's Building Code are critical in reducing sinkhole-related damage to residential and commercial structures.⁸⁹ They also believe that the current provisions in the Code relating to soil testing and foundation requirements should be enforced. As to new construction, these experts recommend that each building lot have at least four (4) 10-foot hand auger borings performed within the building foot print to evaluate the presence of shallow deleterious soil conditions, such as buried debris, excessive organic soil content, and expansive clay soil. Although these tests will not determine the presence of deep sinkhole conditions, they can identify shallow deleterious soil conditions which will affect the foundation design. The auger borings should be evaluated by a geotechnical engineer and would add approximately \$500 to the cost of new construction.

These experts recommend that at least two compaction tests be performed within the building footprint to determine whether the soil is compact enough to build on. The current building code leaves it up to the building officials to determine whether to require soil tests to determine the soil's characteristics.⁹⁰ The cost estimate for this procedure is between \$500 to \$1,000.

If deleterious soil conditions exist, then the structure's foundation design must be addressed through an engineering analysis. Geologists and engineers recommend that the foundation/footing thickness of buildings be increased from 8 to 12 inches to accommodate two layers of reinforcing steel (top and bottom). Currently, only two #5 continuous, bottom-reinforcing bars are required. Adding two #5 continuous, top-reinforcing bars would increase the foundation's ability to carry building loads over areas of low strength on non-uniform bearing soils, especially at interior and exterior building corners. This would doubly reinforce the foundation's structural capacity and reduce the potential for differential settlement and related cracking. The cost is estimated to range from \$2,000 to \$3,000.

Pasco County has amended the Florida Building Code by adopting a local ordinance to provide more stringent standards than those specified in the Code for the design and construction of commercial and residential building foundations in areas where geologic hazards (sinkholes) are determined to exist.⁹¹ This was done to address the large number of ground settlement (sinkhole) insurance claims which have occurred within the county. The county has also taken the lead among Florida counties⁹² over the past several years in adopting provisions to require permits for sinkhole investigations (testing) and ground remediation⁹³ as well as providing for development submittal requirements in geologically hazardous areas of the county.⁹⁴

⁸⁸ Ch. 553, F.S.

⁸⁹ SDII Global Corp., *Technical Bulletin*, 2010.

⁹⁰ Florida Residential Building Code, Foundations, Section R401.4 Soil tests.

⁹¹ Pasco County Code of Ordinances, Chapter 18, June 23, 2009. The preamble to the ordinance states that the Board "has determined that there is a local need to strengthen the Florida Building Code in regards to minimum requirements for foundation bearing capacity to require additional strength and that the local need is addressed by the increase in minimum standards."

⁹² A few other counties have adopted ordinances relating to ground settlement. For example, Levy County adopted an (Ordinance Sec 50-194) to require an evaluation of geologic hazards for certain developments, with the evaluation including an identification of the sinkhole locations on photographs and plats. Other Levy County ordinances require the preservation of sinkholes located in specified areas of the county and the identification of sinkholes on a site plan for proposed excavation and fill operations.

⁹³ Pasco County Code of Ordinances, Chapter 17, Ground Settlement Insurance Claims; Investigation and Remediation Permits. Adopted on March 13, 2007. The permit tracking ordinance creates a system and public record to track sinkhole

As noted earlier in this report, a 2009 law required the Financial Services Commission (FSC) to create by rule a building code effectiveness grading schedule that would evaluate the effectiveness of each sinkhole loss prevention county ordinance in reducing the number of sinkhole claims and the severity of sinkhole losses.⁹⁵ Each ordinance must amend the Florida Building Code and be evaluated 4 years after it takes effect. The FSC has yet to create the rule, however, Pasco County has adopted an ordinance relating to this issue.

Florida Department of Financial Services Sinkhole Database and Florida Geological Survey Subsidence Incidence Report Database

In 2005, the Legislature created a sinkhole information database for the purpose of tracking sinkhole claims made against property insurers.⁹⁶ The Department of Financial Services (DFS) manages the database, with input from the Department of Environmental Protection and the Florida Geological Survey. Insurers are required to submit closed and confirmed sinkhole claims data to DFS and there are approximately 1,000 sinkhole reports currently in the database. However, the database is not available to the public on the DFS website because there are no staff resources currently allocated to provide programming services. The database is available if a public records request is made to the agency.

The Florida Geological Survey (FGS) within the Department of Environmental Protection (DEP) is the state agency responsible for collecting, interpreting, and disseminating geologic information.⁹⁷ This information is primarily used to more fully understand the unique relationship between the many kinds of karst landforms and the state's groundwater resources and aquifer systems. The agency conducts field and laboratory investigations of geological structures throughout the state, including sinkholes, minerals, the water supply, and other natural resources in the state.⁹⁸ The agency also assists state and local officials in the event of a geologic event, such as a large sinkhole occurrence, affecting human health and safety.

The FGS maintains its own database (called the Subsidence Incident Report Database) of over 3,000 reported sinkholes and other subsidence incidents and makes the database available to the public through its website, along with a form to be used to report subsidence events.⁹⁹ Typically, county emergency centers, fire or police departments as well as the general public make incident reports to the database. However, the agency does not field check or verify these reports because it lacks sufficient investigative resources.¹⁰⁰ As a result, the reported subsidence incidents entered into the database may not be accurate.

Public Adjuster Participation and Solicitation in Sinkhole Claims

Under current law, a public adjuster is defined as any person, other than a licensed attorney, who, for compensation, prepares or files an insurance claim form for an insured or third party claimant in negotiating or

investigation and remediation work done on properties. It requires the issuance of an investigation permit when a property is tested for potential ground settlement activity and 2,446 investigation permits have been issued since its adoption (based on 2009 data). A report must be filed with the county once the testing is done containing investigative findings and remediation recommendations. A permit must be issued prior to any remediation and the county has issued 1,998 remediation permits since the ordinance's adoption (based on 2009 data). Once remediation repairs are complete, a remediation report is filed with the county detailing the remediation activities, the materials used for the repairs, the cost of the repairs, an explanation of the differences between the remedial activity recommended in the investigation report and the remediation performed, and the amount paid by insurers for ground settlement claims on the property remediated.

⁹⁴ Pasco County Code of Ordinances, No. 89-21, as amended, Land Development Code, S. 704. Adopted February 12, 2008.

⁹⁵ Ch. 2009-178, L.O.F.

⁹⁶ S. 627.7065, F.S. The intent of the law was to track current and past sinkhole activity to make the information available for prevention and remediation activities.

⁹⁷ S. 377.075, F.S.

⁹⁸ Florida Department of Environmental Protection, Florida Geographical Survey, About Us; <http://www.dep.state.fl.us/geology/default.htm>.

⁹⁹ http://www.dep.state.fl.us/geology/gisdatamaps/sinkhole_database.htm.

¹⁰⁰ The database serves solely as an "estimate" of the sinkhole occurrences in the state.

settling an insurance claim on behalf of the insured or third party.¹⁰¹ They are employed exclusively by a policyholder who has sustained an insured loss and their duties involve inspecting the loss site, analyzing the damages, reviewing the insured's coverage, determining current replacement costs and conferring with the insurer to adjust the claim.

During the 2005 – 2009 period in which the number of sinkhole claims has risen sharply, the percentage of sinkhole claimants who are represented by public adjusters has also increased significantly. Citizens reports that in 2005, only three percent of all sinkhole claims had public adjuster involvement, but by 2009, 25 percent of its statewide sinkhole claimants were represented by public adjusters. According to a January 2010, report by the Office of Program Policy Analysis and Government Accountability (OPPAGA), the number of licensed public adjusters in Florida has increased substantially. Overall, the number of public adjusters increased 330 percent between FY 2003-04 and FY 2008-09, growing from 678 to 2,914.

Many insurers believe that the increase in public adjuster involvement with sinkhole claims involving Citizens and insurers is a result of the aggressive advertising and solicitation campaigns used by public adjusting firms in the regions where the greatest number of sinkhole claims are filed. The following pages are examples of public adjuster solicitation mailings (including an attorney solicitation) that the DFS provided to Committee staff.

During the 2010 session, CS/CS/SB 2264 made a number of changes to the regulation of public adjusters, including restrictions on advertising and solicitation; disclosure provisions relating to public adjuster contracts with insureds; capping their fees at 20 percent of reopened and supplemental claims, prohibiting public adjusters from restricting or preventing insurers from having reasonable access to the insured or the insured property that is the subject of the claim; and establishing a 3-year claims filing deadline.¹⁰² The provisions of that legislation were agreed to by participants of the insurance industry and by two statewide public adjuster organizations. The language in this legislation was incorporated into CS/CS/SB 2044, which passed the Senate and the House, but was vetoed by the Governor.

¹⁰¹ S. 626.854, F.S. Public adjusters are licensed by the Department of Financial Services (DFS).

¹⁰² Although the 3-year claims filing deadline pertained to windstorm or hurricane claims, the peril of sinkhole merits consideration of time limitations placed on claims filings.



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IMPORTANT NOTICE Concerning Your Insurance Claim

August 25, 2010

Barbara Daniels 000016
State Farm Florida Insurance Company
2313 George CT
Melbourne FL 32935-3115

Dear Barbara Daniels,
Our records indicate that your recent insurance claim may have been underpaid.

ACCORDING TO THE Florida Office of Program Policy Analysis & Government Accountability, HOMEOWNERS WHO HIRED A PUBLIC ADJUSTER for their Citizens Property Claims RECEIVED NEARLY SIX TIMES (574%) MORE MONEY THAN HOMEOWNERS WHO DID NOT HIRE A PUBLIC ADJUSTER (see OPPAGA report on following page). This means that if you received \$10,000 for your claim, we may be able to get you \$57,400 in additional settlement money.

We would like to review your recent insurance claim **AT NO CHARGE TO YOU** and determine if you are owed more money.

Citizens Public Insurance Adjusters are State certified, licensed and bonded private adjusters that work exclusively for you, the homeowner, to ensure that you are paid the maximum amount for your claim under the law and your insurance policy. We work for you, never the insurance company.

Citizens Public Insurance Adjusters would like to offer you a free 14 point inspection and evaluation of your insurance claim to see if you were underpaid. Simply complete the reverse side of this letter. →

The inspection is free and our services are completely free unless we get you more money.

Even if you have already settled your claim and cashed your check, we can re-open your claim at no cost or risk to you. You owe it to yourself to know what you're entitled to!

**OUR REPRESENTATION IS FREE, UNLESS WE GET YOU MORE MONEY!
YOU HAVE NO RISK.**

Call (954) 462-5150 for a free consultation or simply complete the reverse side of this letter. →

Very truly yours,

Jacob Pollock, P.A.

Florida Department of Financial Services Public Adjuster License Number E141195

We can get you money for any of the following damage to your home, whether you filed a claim or not:

- Hurricane Damage
- Fire
- Air Conditioner leak
- Broken Pipes
- Dishwasher/Refrigerator Leaks
- Toilet Overflow
- Water Heater Leaks
- Mold Damage
- Roof Leaks
- Sink Holes
- Smoke Damage
- Storm Damage
- Tornado Damage
- Tenant Damage/Vandalism
- Water Damage
- Wind Damage
- Lightning
- Business Interruption

Citizens Public Insurance Adjusters is not affiliated with Citizens Property Insurance Corp.

Agreement on reverse side →

CITIZENS PUBLIC INSURANCE ADJUSTERS
OFFICES OF JACOB POLLOCK P.A.
STATE LICENSED AND BONDED ALL-LINES PUBLIC ADJUSTERS

AUGUST 25, 2010

LETTER OF REPRESENTATION AND AGREEMENT FOR
ADJUSTING SERVICES TO RE-OPEN
INSURANCE CLAIM.

NO RECOVERY, NO FEE AGREEMENT.

The Client engages Jacob Pollock of Citizens Public Insurance Adjusters (CIA), a licensed bonded Public Adjuster, and authorizes him to re-adjust his/her claim to recover additional money for damages. The Client agrees to pay and assigns to CIA, **one third 33% of the claim for new money** in consideration for CIA's estimate for damages and adjusting services. If this is an initial claim, the assignment & fee will be 20% of the claim, not 33%. The Client instructs the below named insurance company to negotiate with Jacob Pollock and specifically authorizes mediation and/or appraisal to resolve the claim as stipulated in Client's insurance policy. In the event the claim goes to appraisal, the Client appoints Piper, Appraisal Service LLC, as his/her appraiser. Client understands and agrees that appraiser will appraise damages based upon his own independent findings and assessment of damages. Said assessment may be based on review of estimators' and or other experts' reports and findings, which may vary from CIA's estimate of damages. Client agrees to hold Jacob Pollock and CIA harmless for appraisers' good faith assessment and execution of appraisal award. **CLIENT WILL NOT BE RESPONSIBLE FOR ANY FEES UNLESS A RECOVERY FOR ADDITIONAL MONEY IS MADE.**

The client may cancel this agreement, without obligation, anytime within 3 days from execution.

Agreed to by:

X _____ Date _____

Client Signature

X _____
Type of Loss Date of Loss

X _____
Print Name

Insurance Company Name, Policy # and Claim #
(If Known)

X _____
Telephone Numbers (VERY IMPORTANT)

Is damage still visible? YES NO SOME

X _____
Email

X _____
APPROXIMATE SETTLEMENT AMOUNT
ALREADY RECEIVED

X _____
Address

INTERNAL USE ONLY
P.A. Signature: _____
Lic #: _____

X _____
City, State, Zip

DO YOU FEEL YOU WERE UNDERPAID FOR: Pool Enclosure Roof
 Ceiling Damage Exterior Damage Floor Damage Kitchen Cabinets Other
Please Describe: _____

"Pursuant to s. 817.234, Florida Statutes, any person who, with the intent to injure, defraud, or deceive any insurer or insured, prepares, presents, or causes to be presented a proof of loss or estimate of cost or repair of damaged property in support of a claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains any false, incomplete or misleading information concerning any fact or thing material to the claim commits a felony of the third degree, punishable as provided in s. 775.082, 1)s. 775.083, or s. 775.084, Florida Statutes."

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CITIZENS PUBLIC INSURANCE ADJUSTERS, LLC
2915 S. FEDERAL HWY., FORT LAUDERDALE, FL 33316
(954) 462-5150 • (877) STORM15 • WWW.STORM15.COM

The logo for oppaga is written in a white, lowercase, serif font on a dark grey background.

OFFICE OF PROGRAM POLICY ANALYSIS
& GOVERNMENT ACCOUNTABILITY



January 2010

Report No. 10-06

Policyholders with public adjuster representation typically received higher settlements than those without public adjusters.

The difference in payments was larger for claims related to 2005 hurricanes, with public adjuster claims resulting in payments that were **747% higher**. However, as policyholders pay public adjuster fees as a percentage of their settlement, their net settlement would be lower than this amount.

For non-catastrophe claims, policyholders who used public adjusters received an estimated **\$9,379** on their claim, compared to **\$1,391** for those policyholders that did not use a public adjuster **(a difference of 574%)**. As stated earlier, policyholders' net settlement would be lower than this amount.

PARTIAL LIST OF RECENT CLIENTS WE HAVE HELPED

HOMEOWNER	ORIGINAL INSURANCE SETTLEMENT*	TOTAL AMOUNT RECEIVED ON CLAIM AFTER AMERICAN ADJUSTERS RE-OPEN**
MITCHELL B.-CORAL SPRINGS	\$30,909.95	\$78,111.31
SERGIO R.-PARKLAND	\$ 8,931.00	\$54,959.78
CECIL L.-SUNRISE	\$18,896.65	\$62,211.06
ESTHER M.-PLANTATION	\$ 3,427.90	\$61,663.31
LAWRENCE S.-CORAL SPRINGS	\$ 4,700.00	\$55,555.10
CHANDLER W.-LAUDERHILL	\$26,551.98	\$59,457.69
INAS O.-CORAL SPRINGS	\$14,986.82	\$80,337.85
ANTHONY L.-LAUDERHILL	\$ 3,339.86	\$42,935.85
LESLIE R.-SUNRISE	\$ 397.42	\$29,844.30
JOHN V.-PEMBROKE PINES	\$23,440.78	\$55,145.70
LEONA W.-FORT LAUDERDALE	\$ 1,001.00	\$74,254.22
PATRICK E.-CORAL SPRINGS	\$44,000.00	\$87,385.30
LAURIE P.-FORT LAUDERDALE	\$21,180.66	\$62,501.17
MILLICENT H.-LAUDERHILL	\$14,345.46	\$44,591.34
SAMUEL M.-SUNRISE	\$ 411.00	\$22,093.35
JAMES P.-PLANTATION	\$ 4,153.14	\$51,231.17
HOWARD S.-PARKLAND	\$ 6,310.34	\$76,180.32
LOUIS P.-PLANTATION	\$21,289.06	\$43,319.33
BRENDA F.-SUNRISE	\$25,434.09	\$46,647.44
HARILAL R.-SUNRISE	\$39,215.71	\$62,561.75
ROBERT K.-PLANTATION	\$21,117.19	\$38,271.13
NEVILLE, M.-SUNRISE	\$ 322.41	\$14,942.67
ROBERT C.-LAUDERHILL	\$22,275.21	\$38,170.89
ANTHONY F.-FORT LAUDERDALE	\$31,477.38	\$67,240.00

*May not include deductible **Total adjusted claim
 ABOVE RESULTS ARE NOT INDICATIVE OF ALL CLAIMS
 YOUR ADJUSTMENT, IF ANY, WILL BE BASED ON ACTUAL PHYSICAL DAMAGE.
 NO GUARANTEES CAN BE MADE THAT YOU WILL COLLECT ADDITIONAL MONEY.



4107 Woodacre Lane
Tampa, FL 33624
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fax (813) 283-2598

Dear Neighbor:

TIME IS RUNNING OUT!

***** Sinkhole Activity*****

We have been successful in recovering large claim checks for several of your neighbors in Florida. Do you have cracking in your foundation, walls, floor, pavement, or pool deck? If so, you may be entitled to a large insurance settlement. Many of your neighbors were simply unaware of damage sustained by the recent **sinkhole** activity. The insurance companies are actively working to eliminate coverage from their policies. Don't miss out on the monies you are owed! Imagine what it would feel like to have to pay out-of-pocket for an expensive repair when the insurance company should have compensated you properly all along.

We are not contractors, and we do not perform the repairs. We are professional public claims adjusters licensed through the State of Florida and we get you the money to make you whole again. If the insurance company owed you a check for damages, would you want to collect it?

Call for a **complimentary 11-point inspection** and enjoy the following benefits:

- Find out the current status of cracks in your walls, floors, pavement, and pool deck.
- Review of your insurance paperwork to make sure you were paid properly.
- Receive peace of mind.
- You could potentially receive a check!

Call us for some names of neighbors we're helping in your area!

Sincerely,

*Preston Runyan, PCA
Public Claims Adjuster
(813) 283-2581 office
License # P128100*

SERVING THE COUNTIES OF
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If you have already retained a lawyer for this matter please disregard this postcard.

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Options and/or Recommendations

This report has provided a review of the Florida laws and academic studies related to sinkholes, an analysis of sinkhole claims and costs, a review of single-peril residual market facilities, and a summary of problem areas relating to sinkholes. Based on the information presented in this report, a series of “options” are provided that will hopefully aid decision makers as they consider various public policy choices related to sinkholes.

There are two basic directions the legislature could take in addressing sinkhole coverage: 1) consider the sinkhole peril to be fundamentally an uninsurable risk, and establish a sinkhole repair program that by its creation would eliminate major cost drivers and help restore the solvency of the private market and Citizens; or 2) leave sinkhole coverage in the private insurance market, but make substantial changes directed at removing the current cost drivers.

1. Establish a Sinkhole Repair Program

Creating a single-peril sinkhole repair program or facility was a recommendation of both academic studies completed in 1992 and 2005 pursuant to statutory directives of the Florida Legislature.¹⁰³ The rationale for such a program is to ensure that structures subject to sinkhole loss be repaired and the land stabilized; provide centralized and consistent loss adjustment services; and help restore the solvency of the private insurance market, and Citizens, which are currently facing significant financial challenges as a result of rapidly increasing sinkhole loss frequency and severity.

Establishing a repair program addresses the penultimate question whether the sinkhole peril is actually insurable because the risk is not measurable or definable which are elements required to underwrite a risk for insurance purposes. Currently, in some geographic regions, it is impossible to charge an actuarially sound rate that is also cost-feasible for consumers. Nevertheless, public policy concerns involving the public’s health, safety and welfare dictate the state address this peril.

Creating a repair program would provide for the following:

- **Repair homes, stabilize land, and preserve the tax base and neighborhoods:** The repair program would require all claims proceeds be used for structural repair and land stabilization of sinkhole properties which would restore property values and preserve neighborhoods. No claims dollars would be provided to claimants. Currently, the majority of properties go unrepaired as echoed by the Hernando County Property Appraiser who stated that since 2005, the county has lost \$173 million in total market value as a result of value adjustments to sinkhole homes because properties are not repaired.
- **Funding/Insurer Solvency:** Unearned premiums would be transferred to the program by insurers and Citizens as initial operating funds. The goal would be that the program eventually be self-supporting without the need for insurer assessments. Insurers and Citizens would cede all their sinkhole policies to the program upon a date certain (after the program is in effect) which would help restore company solvency (by not having to provide sinkhole coverage).¹⁰⁴
- **Benefits for Policyholders:** The program would provide uniform loss adjustment services so that sinkhole claimants would be treated in a consistent and equal manner.¹⁰⁵ Sinkhole coverage would be

¹⁰³ The FSU 1992 Study recommended a statewide subsidence facility be created akin to the Illinois Mine Subsidence Fund as described under the Findings Section of this report. The FSU 2005 Report found that a statewide sinkhole reinsurance facility should be created which would be responsible for the payment of sinkhole claims financed through premiums ceded to the facility by insurers and would coordinate the adjustment of those claims. The Report found that a reinsurance facility, as opposed to a direct writer, would be the more cost-effective solution.

¹⁰⁴ This would include coverage for catastrophic ground cover collapse.

¹⁰⁵ Providing centralized adjustment services would lower adjustment expenses. These services could be contracted for by the facility along with sinkhole testing and other services.

available in all counties at the option of the policyholder, except that the option to drop existing coverage would not be available until after the expiration of the current policy term.

- **Reduce the cost drivers of sinkhole claims:** Once the program is operational, it should be expected that claims frequency and severity would decline and premiums would be reduced because the incentive to file spurious claims is eliminated as the policyholder would receive no claim proceeds. It is suggested that a clear structural damage standard be created to trigger a claim. A presumption that the facility's retained expert is correct should be established and it is suggested that attorney and public adjuster fees be eliminated.
- **Alternative dispute resolution procedure:** The program would provide for an effective dispute resolution program which would be mandatory and binding on all parties with the losing party paying all costs.
- **Rates:** The program could establish its own actuarially sound rates based initially on the rate history of Citizens and insurers.
- **Sovereign Immunity:** The program would operate under the protections afforded a state entity (elimination of bad faith, limitation on liability, etc.).
- **Statute of Limitations:** The program would operate on a "claims-made" basis so that all claims filed after the inception of the facility will be handled by the facility, regardless of the date of loss. Establish a time limitation of two or three years for filing a claim.
- **Tax Exempt:** The program would be tax exempt and operate under the auspices of the State Board of Administration, similar to the Florida Hurricane Catastrophe Fund.

2. Statutory Changes to Consider in Lieu of Establishing a Sinkhole Repair Program or Facility

Statutory changes to the sinkhole law must be implemented to curb the growing sinkhole claims frequency and severity and to address the various areas of concern noted in the Findings Section of this report. The goals of these statutory changes should be to reduce the cost drivers pertaining to sinkhole claims, to encourage policyholders who have legitimate sinkhole losses to repair their homes and stabilize their land, and to remove the incentives for some policyholders to file spurious claims in order to reap financial rewards. Committee staff has compiled a number of suggestions that have been offered by stakeholders as an attempt to address these goals. Some of these suggestions should be enacted in conjunction with other suggestions on the list; however, others could be implemented independent of the other suggestions.

- **Provide a definition of "structural damage" in accordance with measurable standards and criteria established by structural engineers.** Under current law, a sinkhole loss is defined as "structural damage" to the building, including the foundation, caused by sinkhole activity. Defining this term so that it will be interpreted according to scientific standards in an objective manner is critical in establishing that a sinkhole loss has occurred. Defining this term would also reduce the number of claims being submitted for very minor cosmetic damage that does not impact the structure of a home.
- **Due to the differing interpretations of the term "in consultation with" the policyholder, consideration should be given to eliminating that provision and inserting "with notice to" the policyholder.** The statute provides that when a sinkhole loss is verified, the insurer must pay for repairs recommended by the engineers and geologists retained by the insurer "in consultation with the policyholder." The term "in consultation with" is arguably ambiguous and substituting the term "with notice to" would serve to remove the ambiguity.

- **Clarify the “presumption of correctness” as to sinkhole testing reports.** Under current law, the sinkhole report resulting from statutorily compliant sinkhole testing is to be presumed correct. Clarify that the presumption affects the burden of proof and not the burden of producing evidence.
- **Create a Statute of Limitations for sinkhole claims:** Provide that a sinkhole claim under an insurance policy is barred unless notice of the claim is given to the insurer in accordance with the terms of the policy within 2 or 3 years after the policyholder knew or reasonably should have known about the sinkhole loss.
- **Allow insurers the option to provide sinkhole coverage, but continue requiring catastrophic ground cover collapse.** Currently, insurers are mandated to provide sinkhole coverage to insureds for an additional premium.
- **Consider limiting sinkhole coverage by:**
 - **Restricting coverage to a percentage of coverage A, which applies to the dwelling on the insured premises or a percentage of the principal commercial structure.¹⁰⁶**
 - **Restricting coverage to the principal structure, i.e., the insureds dwelling, as opposed to pool decks, outbuildings, driveways, etc. In the context of commercial structures, limit sinkhole coverage to the principal commercial structure.**
 - **Restricting coverage to residential, as opposed to commercial, properties.**
- **Allow insurers to nonrenew policies with sinkhole coverage throughout the state; however, insureds must have the option to purchase an endorsement for sinkhole coverage, subject to an inspection of their property as provided under current law.**
- **Provide reasonable timeframes in which policyholders must enter into contracts for repairs so that additional damage can be prevented and repairs completed.**
- **Revise the definitions for both the professional engineer and geologist to reflect appropriate sinkhole training/educational courses, etc.**
- **Prohibit policyholders from accepting rebates from persons performing repairs and provide for sanctions.**
- **Clarify that if an insurer pays policy limits pursuant to a sinkhole claim, it can nonrenew the policy.**
- **Require the insurer to provide a certified copy of the geologist/engineer report to the insured.**
- **Require the policyholder, as a precondition to accepting payment for a sinkhole loss, to file a copy of any geologist/engineer report and the report by the neutral evaluator with the county clerk of court.** Under current law, the insurer pays for the filing and recording costs with the clerk.
- **Require the seller of real property upon which a sinkhole claim has been made to provide the buyer, prior to closing, with a copy of the geologist/engineer report, the report by the neutral evaluator, and to disclose the amount of the claim payment and the amount actually spent on stabilization and repair.**

¹⁰⁶ In a property insurance policy, Coverage B applies to other structures located on the insured premises; Coverage C covers personal property, such as furniture and clothing; and Coverage D is the insureds loss of use coverage.

- **Consider amending the current provisions for bad faith claims and attorney fees for cases involving sinkhole claims.**
 - **Consider a change to how the cost of sinkhole testing is distributed, such that under some circumstances, the policyholder must bear some portion of the cost of testing.**
 - **Rating Law:** Allow insurers to use a more simplified method to support rate filings for sinkhole endorsement, and remove the statutory cap on Citizens sinkhole rates.
3. **Revise the Florida Building Code:** Experts in the field of geology and engineering have provided Committee staff with recommendations to be implemented statewide regarding soil testing and foundation construction that, if followed and enforced, would greatly reduce sinkhole-related damage to structures, both residential and commercial. They recommend the following:
- **Require Testing on all Sites Prior to New Construction:** Require at least four (4) 10-foot hand auger borings be performed within the building foot print, ideally within the four corners of the structure. These borings should determine what the composition of the top 10 feet of soil is in order to determine if a lot is buildable and to look for organics, clay, loose soil or debris. Estimated cost: \$500. After the hand auger borings are completed, perform at least two compaction tests within the building footprint to verify that the soil is compact enough to build on. The cost estimate for this procedure is between \$500 to \$1,000.
 - **During Construction:** During the building process, increase the foundation/footing thickness of buildings from 8 to 12 inches and require that two #5 continuous, “top-reinforcing” bars be added to increase the foundation’s ability to carry building loads over areas of low strength on non-uniform bearing soils, especially at interior and exterior building corners. Currently, only two #5 continuous, “bottom-reinforcing” bars are required. This would doubly reinforce the foundation’s structural capacity and reduce the potential for differential settlement and related cracking. The cost is estimated to range from \$2,000 to \$3,000.
4. **Revise the Neutral Evaluation Process:**
- Establish standards of professionalism and conflict of interest provisions for neutral evaluators including a mechanism for parties to disqualify a neutral evaluator.
 - Specify the scope of issues for determination by the neutral evaluator including causation, and methods and costs of stabilization and repair.
 - Allow neutral evaluators to appoint experts (geologists, engineers, structural engineers, contractors, etc.) to aid them in providing information and opinions as to disputed issues that are beyond the expertise of such evaluators, so long as appointees are not otherwise disqualified.
 - Specify the scope of practice of the neutral evaluator, e.g., whether the evaluator should do an on-site inspection of the property subject to the claim; whether the evaluator should conduct independent testing to determine whether there is or is not sinkhole activity on the property.
 - Require reports initiated by the policyholder confirming a sinkhole loss or disputing a sinkhole report to be provided to the neutral evaluator.
 - Specify that actions of the insurer are not a confession of judgment or admission of liability.
 - Clarify that if the insurer agrees with the neutral evaluator’s report, that payment for repairs and stabilization must be made in accordance and conditions of the applicable insurance policy.

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- Establish time frames as to the number of days for neutral evaluators to submit their reports and clarify other time provisions. For example, extend the time from 45 days to 90 days for the neutral evaluator to hold a neutral evaluation conference and provide parameters for extending the time for such a conference to be held. Change the time provisions in current law to calendar, not business days.
 - Establish a fee limitation as to the amount neutral evaluators may charge. Currently, there is no fee cap and insurers must pay all costs associated with the neutral evaluation.
 - Fund the administrative costs for DFS to operate the neutral evaluation program via fees imposed on all parties involved in the dispute. Currently, DFS allocates 4 FTE's to administer the neutral evaluation program; however, other mediation programs which DFS administers (Residential Property, Auto, Commercial Residential and the Continuing Care Retirement Communities) are offset by fees allowed by statute to cover program costs.
 - Provide immunity from liability for neutral evaluators as to the performance of their duties. Currently law extends immunity to mediators involved in the DFS mediation programs by considering them agents of the department. Neutral evaluators should be given the same immunity.
 - Limit the number of neutral evaluation conferences per sinkhole claim to one such conference as current law does not address this issue.
 - Prohibit DFS staff administering the neutral evaluation program from being subpoenaed, except as provided under ch. 119, F.S.
5. **Public Adjusters: Impose relevant provisions relating to public adjusters similar to those contained in CS/CS/SB 2044 which passed the Legislature during the 2010 session.** These provisions include prohibiting public adjusters from making certain statements in advertisements or solicitations and capping fees in supplemental or reopened claims.
6. **Sinkhole Database:** The Department of Financial Services and representatives for the insurance industry believe the Sinkhole Database should be eliminated.